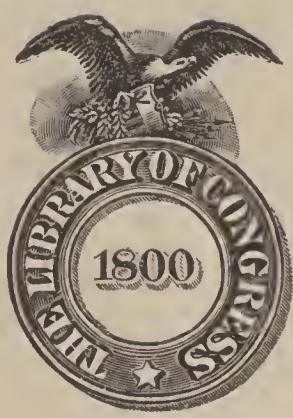

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

SIXTY-THIRD CONGRESS
SECOND SESSION

ON

BILLS PROPOSING TO AMEND THE CARMACK AMENDMENT

SEPTEMBER 24, 25, AND 30, 1914

WASHINGTON
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1914

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

House of Representatives.

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BILLS PROPOSING TO AMEND THE CARMACK AMENDMENT.

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Thursday, September 24, 1914.

The subcommittee met at 10 o'clock a. m., Hon. William C. Adamson (chairman) presiding.

The CHAIRMAN. Senator, the conditions in the House are such that we can not sit this afternoon, and I would like to ask if you will all be here to-morrow?

Mr. FAULKNER. Yes, sir. We will have to be here to suit the convenience of the committee.

The CHAIRMAN. What is to be the order of procedure? You wanted the hearing, and I suppose it will suit you to go on and show your objections and then let the other side reply?

Mr. FAULKNER. Mr. Chairman, it has always been customary for those who propound a measure to suggest the reasons and the necessity for such a measure.

The CHAIRMAN. They have not asked for a hearing. You wanted a hearing.

Mr. FAULKNER. Of course, that is true, and if they do not propose to appear, that would be one thing but there has been no hearing, even in the Senate, on behalf of the propounders of this measure, and therefore we can only guess at the reasons for it.

The CHAIRMAN. Judge Cowan, you and Mr. Lincoln can have to-day, and we will give the Senator another day.

Mr. COWAN. I do not know whether Mr. Lincoln is with me about the bill. I have a suspicion that he is not.

The CHAIRMAN. Then, you can go ahead.

STATEMENT OF MR. S. H. COWAN, ATTORNEY FOR THE AMERICAN NATIONAL LIVE-STOCK ASSOCIATION.

Mr. COWAN. Mr. Chairman and gentlemen of the committee, it seemed rather strange to me that Members of Congress would question the propriety of requiring railroad companies to answer for full responsibility for their own negligence. It is a strange situation. I did not know we were going to meet any such situation. Of course, this committee is not engaged in the business of making railroad rates. It has been said that there is a fear on the part of some that in case the Cummins bill—addressing myself to that bill, which requires full responsibility—should pass, it would result in an increase in railroad rates; but it is passing strange to me that they are here objecting to it in view of the fact that, notwithstanding the

decision of the Interstate Commerce Commission recently in the 5 per cent rate advance case, they are making application to reopen that case in advocacy of the idea that they ought to have an advance in rates on account of the war. Of course, they do not believe that such an advance would result, and you need not have any fear of it.

I am addressing myself now to the live-stock situation. There are not many other things affected by valuation. They have some ores and things of that kind, but there is no trouble about providing for them in a classification. My friend, Senator Faulkner, may not know how to provide for them, but by friend Mr. Lincoln and Mr. S. H. Johnson and the other traffic men here do know how to provide for it.

What we want is that the railroad company shall answer for its responsibility just as they have done as long as I have been practicing law in our western country, when by their own negligence they have destroyed property.

The CHAIRMAN. Do you think it was ever the intent of the Carmack amendment to affect the measure of damage or the rules of procedure or the rules of evidence at all?

Mr. COWAN. No; except this far, the Carmack amendment—you were here on this committee and Mr. Stephens and Mr. Esch were here, if not the other members of the committee, and the intention there was mainly to enable the shipper to recover from the initial carrier, but to prevent limitation of liability.

The CHAIRMAN. We originated that in Georgia in order that we would have a convenient place to sue the railroad and the Supreme Court held it unconstitutional and then Judge Bartlett and I tried to put it in the Federal law and were not able to do it until it got over to the Senate and Senator Carmack put it on.

Mr. COWAN. I know personally what Senator Carmack thought about it and I know that you gentlemen know what he meant, and so does Senator Faulkner. He meant to make the initial carrier liable for the entire damage, and he intended to prevent any limitation by any receipt, bill of lading, contract or otherwise against their liability for negligence, just as the law existed in the State of Tennessee, where he came from, the State of Missouri, the State of Texas, and I believe the State of Georgia, although I am not sure. But the Supreme Court, by its construction of the Carmack amendment, has held that they may make a contract with the shipper, which he can not help, because he has to make the contract; he has no more show than a sheep has to kill a butcher. He has to make the contract or take the higher rate, which he does not desire to do. The ordinary rates have been in effect because the higher rate has not been used at all.

The CHAIRMAN. Do the companies give a rate lower than the ordinary rate in order to secure this business?

Mr. COWAN. Absolutely not. Take, for example, one case which will illustrate the point. I do not want to take the time of this committee, because the matter is so plain to those acquainted with it that it can not be misunderstood. In Texas we have a law which Mr. Rayburn framed into a bill here, which, I think, is about the best one I ever saw, and contains about six lines of ordinary print, that no railroad company or other common carrier shall be permitted to limit its liability as it exists at common law, and the law stops right there. We have, following the State of Georgia and some other States, a system of making rates in our State. We have 15,000 miles of rail-

road, more Democrats than any other State in the Union, and a considerable amount of traffic. There has been no trouble about it. Mr. Rayburn has lived there, I believe, all his life, and other gentlemen who may be sitting around here from Texas know that we have made our rates on live stock at so much, based on mileage, and we put beef cattle and calves in one class and stock cattle and cow ponies in another, and we have a very large market at Fort Worth. We do not have any trouble about it at all. The railroads simply can not limit their liability. They have to accept what the statute says; but when the Interstate Commerce Commission fixed the rate to Oklahoma City, being a competing market, and Wichita, Kans., they took the Texas schedule and made the rates by the Texas schedule, disregarding the fact of this extra liability because nobody said anything about it, and so it is to-day, that under the decision of the Interstate Commerce Commission they have a mileage scale of rates to Oklahoma City and to Wichita, Kans., based on the Texas mileage scale, in both of which cases full responsibility existed on the part of the railroads. It is only since the Supreme Court discovered that Congress was not able to enact a law that made railroad companies liable, or that they made a mistake—it is only since then that these gentlemen have discovered that they are going to raise rates enormously in case this full liability law should be enacted.

The CHAIRMAN. The Supreme Court has not always been unanimous in determining the incompetency of Congress, has it, Judge?

Mr. COWAN. No; and it looks like since most of the Congressmen are Democrats, they ought to know better than to say that they are not competent.

We had a case before the Interstate Commerce Commission, or, rather, before an examiner of the commission, because you know that cases are not now generally tried before the Interstate Commerce Commission. They are only heard before an examiner, who makes a report to the commission and argued before the commission. This case was heard at Colorado Springs, and in that case we proved by a gentleman whom I will introduce to this committee in a moment that taking 75 or 80 per cent of all the claims for damages which were presented at Kansas City, the largest Southwestern stock market, 8½ cents a car on an average would pay for all the additional liability over and above what they have named in the contract. The difficulty lies in the fact that the man who is unfortunate and who happens to have an accident happen to his live stock is the man who must respond to the liability which the railroad companies ought to pay themselves. There is the difficulty.

I will soon have here some matters to hand in to the committee for its consideration which are now being prepared. I had some difficulty in getting the record. It was testified in that case that if a man has 20 cars of cattle and he has a claim for damages resulting from a few dead and a few cripples and in delay in reaching the market, in shrinkage of his live stock, he puts in the sum total of his claim, and he needs no relief. But the man out in Iowa or Minnesota or in the country where the farmers feed their crops to their live stock and fatten them for market who happens to have an accident in shipping his one or two cars, he loses his year's work. Now, the point is that a railroad company ought to be liable for the full value of the property which by its negligence is destroyed.

The CHAIRMAN. You would have no objection to such contract if they cut the rate in half, would you?

Mr. COWAN. Yes, sir; I do not believe in changing the rates in that way at all. I believe in making the rate what it ought to be.

The CHAIRMAN. At any rate, you think the only excuse for that sort of a limitation is securing a reduced rate?

Mr. COWAN. That is the excuse they have named. Several gentlemen here who have talked about this uniform bill of lading have talked about the reduced rate, but there is nothing of the sort.

Mr. CULLOP. Why will it make it necessary to increase the rate?

Mr. COWAN. It is not necessary.

Mr. CULLOP. I should think not.

Mr. COWAN. The point is this: Let the railroad company have money enough out of its traffic to pay its operating expenses and to pay a fair profit on its business. Within operating expenses is included loss and damage, which amounts to about $2 a car on live stock, and which amounts to about an average of $1 a car on other freight; but that is infinitesimal.

The CHAIRMAN. Judge Cullop and I both want to understand this matter. It is a fact that charging the regular filed rates and no less, the railroads still seek to make this contract limiting their liability against their negligence?

Mr. COWAN. Absolutely.

Mr. CULLOP. Is not the only difference the fact that it drives the shipper to some other court to sue? As far as liability is concerned, they would be liable for the loss, but he has got to find the carrier on which the loss occurred and go into that jurisdiction to sue. If the loss is on the road where it originated, he can sue there, and if it occurred on a connecting carrier, he would have to go over there to sue.

Mr. COWAN. If I may be permitted to correct you, you are somewhat mistaken about that. Under the decisions as they exist now, the Supreme Court holds that the carrier may contract with the shipper for a limited liability, and, if it is an interstate shipment, that contract is valid. If it is a State shipment, in our Western States, at least, it is not valid. The point about it is that it forces the shipper to lose if he happens to have the misfortune of the railroad being negligent and destroying his car of hogs or cows or household goods or whatever it may be.

Mr. STEVENS of Minnesota. You have an ample remedy now under the law, if you care to pursue it. The fact is that what you want to do is to restrict the power of the Interstate Commerce Commission to remedy these evils, such as they are.

Mr. COWAN. Not at all; that is a mistake. I remember the discussion here the other day about that.

The CHAIRMAN. Did you not admit the other day that you did have the power now to go before the commission and correct this practice?

Mr. COWAN. I said that the commission had the power to do it.

The CHAIRMAN. Then you can go before them and secure that action, if they will grant it?

Mr. COWAN. I say that the law ought to declare the liability of the railroad company; that it shall not exempt itself from its own negligence. Now, so far as the rate is concerned and so far as the

regulations are concerned, that is a matter not for this committee but for the commission to determine. But the law ought to be that a railroad company shall be responsible for its own negligence, in order that you may protect the man who has no chance to protect himself. You can not go before the Interstate Commerce Commission and try every case of this kind. I think I can show by Mr. Farrar here that in one case where they sought to recover reparation amounting to $14 for one man and $16 for another it cost $1,300 to make up the exhibits which they required. Now, you gentlemen may think it is a very simple matter to go before the Interstate Commerce Commission, but the man who has a few cars of freight, it will cost him more than his entire freight rate to do it; and that is what is happening every day.

Mr. STEVENS of Minnesota. And that is what we want to correct.

Mr. COWAN. I want the law to declare that the railroad company shall be responsible for its negligence and that is all I want, and I do not see how anybody can object to that.

Mr. DECKER. Where is there any State or country where that is not the law?

Mr. COWAN. I am only acquainted with the Western States, but it is not the law of the United States, according to the decision of the Supreme Court in construing the Carmack amendment, and that is why we want the law amended.

Mr. DECKER. Will you give us a synopsis of what that decision holds?

Mr. COWAN. The substance of the holding is that a railroad company may require you when you go to ship to make a contract, and they put it in their tariff, and having done so they are bound to enforce it, limiting their liability.

Mr. DECKER. It is not a question of not being liable for their negligence; it is a question of how much they are liable for. They are liable for their negligence, but it is a question of amount whether it shall be fixed by proof after the accident or by agreement before the accident. Is not that the substance of it?

Mr. COWAN. The substance of it is that they fix it by agreement before there is any proof at all.

Mr. DECKER. In other words, under the law as it is now, the man states what his property is worth, and then if the railroad company destroys it by negligence——

Mr. COWAN (interposing). The man does not state anything about it. The contract is printed, and it is stated in the contract that no agent of the railroad company has a right to make any other contract.

Mr. DECKER. Will you state what is in that contract?

Mr. COWAN. $50 is the limit for steers, $30 for cows, $10 for calves, $10 for hogs, and $3 for sheep.

Mr. DECKER. Do you mean that a man who shipped a $100 steer could not change that contract?

Mr. COWAN. I mean he could not change it unless he paid.

Mr. DECKER. Unless he paid what?

Mr. COWAN. A 10 to 20 per cent higher rate.

Mr. DECKER. Who fixes that rate?

Mr. COWAN. The railroad company. Nobody uses it.

Mr. DECKER. And who can change it?

Mr. COWAN. It can be changed, of course, by the Interstate Commerce Commission.

Mr. DECKER. Is not that where the trouble is?

Mr. COWAN. No, sir; it is not. The trouble lies in the fact that up to the time of these decisions of the Supreme Court the railroad company was not permitted to contract against its negligence by fixing these values; but by a construction of the Carmack amendment the Supreme Court holds that they may do it. We want to amend the Carmack amendment and say that they can not fix the limit of liability; that they can fix their rates at whatever they ought to be, but they can not fix their liability for their own negligence. I can not see how anybody can object to that.

Now, gentlemen, I have nothing more to say. Mr. Farrar, of Kansas City, is here representing the Live Stock Exchange, and perhaps handles more claims for damages than any other man in the country. Mr. Sykes, the president of the Iowa Corn Belt Meat Producers' Association, is here, and also Mr. Stryker, who represents the South Omaha Live Stock Exchange; also Mr. Thorne, of the Iowa Commission, who is too well known to be introduced; and Judge Henderson, who is the commerce counsel for the State of Iowa, to say nothing, of course, about myself.

Mr. ESCH. If your proposed amendment to the Carmack amendment were carried, would not that have a tendency to increase the rates, because you would then fix rates on valuation?

Mr. COWAN. No, sir; that is a mistake. Of course, if it had that tendency the railroads would all be in favor of it, as I remarked a while ago; but we proved, and can prove here now by Mr. Farrar, that the additional amount necessary per car on the entire business does not amount to over 8½ cents per car; but when it lands on your neighbor and he loses a cor, that represents his year's work, so that really whom we represent here is practically the poor man. I think that Mr. Rayburn knows that the big cattle shipper in Texas does not care anything about it on large shipments.

Mr. RAYBURN. You do not think the railroad companies ought to be permitted to limit their liability and ought to be forced to pay the full amount of the loss due to their negligence?

Mr. COWAN. Yes, sir; and they ought to have whatever rate is necessary to take care of all of that business.

Mr. RAYBURN. The damages collected from them are charged up to operating expenses?

Mr. COWAN. Yes, sir; as loss and damage.

Mr. RAYBURN. And you do not think that those people who do this shipping ought to be stood up for that amount for the simple reason that there is a possibility of a slight increase of rates incident to it?

Mr. COWAN. Not at all. If they ought to have an increase in rates, let them have it. That is a question that ought to be tried out.

Mr. DECKER. I do not just understand your statement. I want to know about the law as it is now. You mean to say that if there is an accident and some steers are killed through the negligence of the railroad company, the man can not recover the value of the steers now?

Mr. COWAN. I mean exactly that, because the railroad company requires him to sign a contract that fixes their liability.

Mr. DECKER. What is in that contract?

Mr. COWAN. A limitation of $50 on steers, $30 on cows, and $10 on calves, and so on.

Mr. DECKER. You say you do not care about paying a higher rate. If he states that a steer is worth more than $50, he can get more value on his steer if he pays more freight. Who should pay more freight—the man who ships a $50 steer or the man who ships a $100 steer?

Mr. COWAN. There ought not to be any difference, and there has not been.

Mr. DECKER. Is there not more hazard in being responsible for a $100 steer than in being responsible for a $50 steer?

Mr. COWAN. Very little.

Mr. DECKER. How much? Is there not a difference of $50?

Mr. COWAN. There is a difference of $50 to the man who loses the steer.

Mr. DECKER. And to the railroad company that has to pay for the steer?

Mr. COWAN. No. Take the Burlington Railroad, handling 150,000 cars a year, what difference does it make to them per car? It is not over 8 or 10 cents on an average for the entire loss and damage over and above the amount that is now specified in the contract.

Mr. DECKER. You mean there is only that difference between what they would have to pay under full valuation and what they pay now?

Mr. COWAN. That is correct; but it amounts to a whole lot if you are fattening two carloads of cattle and have your farm products in it and they happen to be wrecked and you can not get but $50, when you have put more than that in the cattle to fatten them. The point is to protect the little fellow, because the big fellow can protect himself.

Mr. STEVENS of Minnesota. If that is true, your scheme gives the little fellow the worst of it. If the average is to be taken, the little fellow pays more than he ought to under that average.

Mr. DECKER. In your experience, who usually ships the $100 steer, the little fellow or the big fellow? Does not the little fellow usually have the $50 steers?

Mr. COWAN. No, sir. The people of Iowa are the people who feed the cattle worth $125 and $150. The Texas man ships the cattle to the market and the Iowa man takes them out and fattens them and ships them again to market.

Mr. DECKER. The big fellow ships the little steers?

Mr. COWAN. Certainly.

Mr. DECKER. Why is that true?

Mr. COWAN. If you go down into Arizona, New Mexico, southwestern Texas, or Old Mexico, you will see the light steers, the two-year-olds, for example, and you can load 35 or 40 of them in a car, and they will pay $50 a head on them. They send them sometimes up into South Dakota, Wyoming, Montana, or Nebraska, and they are kept on the ranges there for two years. They are then shipped into South Omaha, St. Paul, Chicago, or some other place and sold for feeders. These gentlemen, like Mr. Sykes here, go to the market and buy these feeders and ship them out into the State of Iowa and feed them their crops, and they will make 1500-pound steers. The big fellow ships the little cattle and the little fellow ships the big

cattle. Of course, the other gentlemen here who are engaged in the business know more about it than I do.

Mr. CULLOP. The theory of your legislation is founded on care, on the degree of care?

Mr. COWAN. I want the railroad company responsible for their negligence.

Mr. CULLOP. And is not founded on the value of the article shipped at all; but is founded upon the care that should be exercised in the handling the product, which is an element of good public policy.

Mr. COWAN. Undoubtedly. Now you take, for example, the sheep business——

Mr. DECKER. You told us here the other day that one of the elements that went into the making up of freight rates was the hazard involved; that is, the amount the carrier would have to pay in case he did not deliver the goods.

Mr. COWAN. Certainly. All of the items of operating expenses must enter into what a freight rate ought to be, and that is one of the items of operating expenses, and it is remarkably small when you distribute it among the entire traffic, but it is remarkably large when you land it on a poor individual who happens to have an accident happen to his stock.

Mr. DECKER. The question is, does the small man proposition affect the justice of it?

Mr. COWAN. I do not know what your question implies. The small man is no more entitled to justice than the big man.

Mr. DECKER. I understand that and we all know that. I never did anything but sue a railroad company in my life, and that is the only connection I ever had with them. This big fellow and little fellow proposition does not have any force with me. I just want to get at the justice of the proposition and I know that if you do that you will help the little fellow more than you will the big fellow, because he is the one that is always being hurt. But I do not accede to your proposition that because of the general average it will not cost much more freight it is better to fix it that way than to try to get a law so that each man will pay in proportion to the benefits he receives. It strikes me that that is what ought to be done. This may not be the kind of bill that will accomplish that, and if it is not, tell us what will accomplish that purpose and I am for it.

Mr. COWAN. There is no difficulty, as I tried to state the other day, about classification. The class rates running from 1 to 6 in official classification territory and from 1 to class E, making 10 classes, in the Western classification, are supposed to be based upon two ideas, one is the bulk of the article, and the other is the value of the article and the risk. We have to-day one rate on stock cattle, one rate on cow ponies, another rate on beef cattle, another rate on bulls, another rate on calves, another rate on sheep, another rate on hogs, and so on. There is not the slightest difficulty about a railroad gauging its rates to fit the responsibility. That is a matter of detail for the traffic man, subject, of course, to regulation by the commission of a State, if it is State traffic, and by the Interstate Commerce Commission if it is interstate traffic. It is the duty of the commission to regulate the amount of the rate according to the circumstances of the transportation and the liability, and I am willing to risk that, and I say it does not cost more than 8½ cents per car on all the live

stock in the West to pay the extra value above what is named in these contracts, but it costs the poor fellow who happens to have an accident his year's work.

The CHAIRMAN. The bill introduced by Mr. Rayburn, to which you referred a moment ago, expressed in plain, United States language, provides that when a railroad company accepts freight at regularly accepted rates and damage occurs, their liability shall not be reduced by any contract as to their liability?

Mr. COWAN. That is a mighty simple way to put it, and the Texas statute has been sustained. I do not think there are over five or six printed lines to it, but it was supposed that such a bill could not pass the Senate with that plain Texas language in it.

Now, gentlemen, let us say to the railroad company, "You be responsible for your negligence and we will take care of the rate matter through the ordinary channels where that is taken care of, and whatever the rate ought to be let it be that. I am willing to chance it, because I know the difference is so small.

Mr. DECKER. As I understand, they have already fixed the rate and you do not say that a man can not get a higher valuation if he pays a higher rate. Do you object to a $100 steer being charged more freight than a $50 steer?

Mr. COWAN. I do. I say that all ordinary meat animals ought to be charged on a uniform basis. That is my opinion; the same as on grain. For instance, take the different varieties of wheat and flour. Wheat may have a different value. Wheat is worth $1.20 today and another time it is worth 80 cents. You can not fix rates by value in that way. The freight ought to take a uniform rate of so much per 100 pounds, and then make the rates high enough so that they will meet the necessities of the railroad.

Mr. DECKER. It does not take any more room in a freight car to ship a $150 horse than it does to ship a $10,000 race horse. Now, what about the freight on those two animals?

Mr. COWAN. In these days there are no race horses.

Mr. DECKER. We will admit that, although some people think there are, and they have to pay for race horses when they are killed.

Mr. COWAN. It is not necessary to consider the race-horse business in comparison with meat animals and food products, because there is not 1 car of race horses to 5,000 cars of meat animals.

The CHAIRMAN. They always go by express.

Mr. COWAN. All that are of any account go by express, and there is no place to ship them to, because no State permits horse racing. Furthermore, it is no trouble to have a tariff say that the rate on stallions shall be so-and-so and the rate on thoroughbred bulls so-and-so, the rate on dairy cattle so-and-so, and the rate on race horses so-and-so. There is no difficulty about that.

The CHAIRMAN. Very fine stock is always sent by express, whether horses or bulls.

Mr. COWAN. There are various ways of doing that, Mr. Chairman. For example, a man goes to the royalty show at Kansas City and buys a bull costing $5,000. I know of that having been done by Mr. MacKenzie, a gentleman some of you know. He ships the one bull in a car, and they charge him something approaching the carload rate. I do not recall what it costs to ship a bull from Kansas City to Texas, but about $40 or $50. There is a special rate appli-

cable to that situation. What we are talking about is the ordinary business of the country. All of these other matters can be taken care of by tariffs. There is not the slightest difficulty about doing that, and the thing to do is to declare that the railroad shall be liable for its negligence and let the rate take care of itself. I thank you.

FORT WORTH, TEX., *August 13, 1913.*

F. B. Houghton, F. T. M., A. T. & S. F. Ry.; J. E. Gormon, V. P., C. R. I. & P. Ry.; Geo. H. Crosby, F. T. M., C. B. & Q. Ry.; E. S. Keeley, V. P., C. M. & St. P. Ry.; Martin Hughitt, F. T. M., C. M. & W. Ry., Chicago, Ill.; J. H. Johnson, V. P., Mo. Pac. Ry.; J. A. Middleton, F. T. M., St. L. & S. F. Ry.; C. Hailo, V. P., H. K. & T. Ry., St. Louis, Mo.; C. K. Dunlap, F. T. M., Sunset Central Lines; L. H. Hogoott, A. G. F. A., I. & G. N. Ry., Houston, Tex.; J. A. Monroe, V. O., Union Pacific Ry.; H. A. Johnson, O. F. A., Colorado & Southern, Denver, Colo.; U. C. Storley, O. F. A., Ft. W. & D. C. Ry., Fort Worth, Tex.; N. W. Leech, F. T. M., T. & P. Ry., New Orleans, La.

GENTLEMEN: This joint letter is addressed to you to invite a conference between the representatives of live-stock associations of live-stock shippers in the Central Western, Western, and Southwestern States, and the live-stock commission exchanges at the different markets, and the Board of Railroad Commissioners of the State of Iowa, and perhaps others of railroad or corporation commissions of the Western and Southwestern States to be held at an early date at Chicago to determine upon the value of live stock inserted in live-stock shipping contracts and in the tariffs of the several roads; and to endeavor to agree upon some equitable and fair basis for the limitation of value and liability of the carriers to the shippers.

As you are aware, recent decisions of the Supreme Court of the United States allow the railroads to insert a limitation of liability to the value named in the live-stock shipping contract and in the tariffs. These valuations vary, and in practically all cases are too low. In many States the limitation was held invalid until the recent decisions. The matter has been brought to the attention of Congress by a bill or bills pending providing that railroads may not limit their liability by inserting value limitations in their contracts and tariffs. There have been proposals also and propositions have been made to bring proceeding before the Interstate Commerce Commission with a view to regulating this subject, and after the matter has been discussed between the representatives of the American National Live Stock Association, headquarters at Denver, T. U. Tomlinson, secretary; the Corn Belt Meat Producers' Association of Iowa, H. C. Wallace, secretary, Des Moines; Mr. Cliffors Thorne, chairman of the Board of Railroad Commissioners of Iowa, Des Moines; the National Live Stock Exchange, representing the various live-stock exchanges at the markets, John W. Moore, president, Chicago; and representatives of the Cattle Raisers' Association of Texas, S. B. Spiller, secretary, Ft. Worth, it has been decided that we first invite a conference with the principal lines of railroad serving the live-stock markets from the West to ascertain whether an agreement could be reached. If so it would pretermit the necessity of a proceeding either in Congress or before the commission.

It was suggested that an attorney for the American National Live Stock Association and the Cattle Raisers' Association of Texas I request such a conference; hence I write this letter, and ask a reply as to whether you would favor a conference; and if so whether it might be held in Chicago somewhere about the 12th to the 15th of September. Would thank you for an early reply expressing your opinion upon the subject, and I trust that those to whom this letter is addressed may confer with one another concerning the matter.

I may say that it is the opinion of stock raisers and shippers of the country that the valuation or limitation in contracts is too low. Furthermore, that the clause in the tariff providing for shipments without limitation of liability are unreasonably higher than the shipments with a limit of liability. It is our opinion that an average of 1 cent or 1½ cents per 100 pounds would more than compensate for the entire loss and damage in live-stock shipments on the principal roads. It is our desire therefore to have an increase in the value named in the contract and to lower the difference in rates between the shipments without such limit of liability and shipments upon the limited liability.

Very respectfully,

S. H. COWAN.

STATEMENT OF MR. J. WALTER FARRAR, ATTORNEY AT LAW, KANSAS CITY, MO., REPRESENTING THE KANSAS CITY LIVE-STOCK EXCHANGE.

Mr. FARRAR. Mr. Chairman and gentlemen of the committee, Mr. Cowan has gone over the principal field in a very comprehensive manner, and I will only call attention to a few of the details with which in my limited work I have come in touch. Before commencing the practice of law I spent some 15 or 18 years in the cattle business and in the business at the stock yards, and I naturally came in touch with the live-stockmen's interests. When I came to practice law that is all I had to do; that is, to look after the business of cattlemen, because nobody else knew me. At the time I commenced practicing law, in 1906, the Hepburn bill went into effect. Prior to that time, as a cowman, when we had claims against the railroads arising out of delay or damage causing loss of stock, it was the custom to go and talk to the railroad agent about it. He would give us a nice talk and our transportation home, or transportation to wherever we wanted to go, and that was about the end of our claims.

Many a $100 claim has been settled for a $5 pass. That was the way we were doing business as a class of people with the railroads up to that time. Occasionally a man got his settlement in good shape, and he did better, but the ordinary claims were just piling up. When the Hepburn bill went into effect the railroads began to say to the people, "We can only give you passes along certain lines, under certain limited conditions," and then the live-stock public began to assert their rights and take up those old claims. They began to put in claims when they were damaged. Then the commission men who had been handling these claims said to the shippers, "There is no use of putting in a claim with the railroads, because you can not collect it; you can not collect it unless you sue them; and you can not sue them unless you go down to Texas." There was that general talk in the markets, and the railroads were not, as they say, harassed by those claims. At this juncture we find the commission men telling the shippers, when they had a claim, "Turn this over to some lawyer; we can not collect it." Through that medium a large number of men brought their claim business to me, as I was acquainted with the commission men of Kansas City, and I have handled during the last six years about 18,000 of these claims and adjusted them with the railroads. Usually we have had very little litigation.

Those claims, running about 2,500 a year, put me in touch with all the leading railroads in the southwest, such as the Santa Fe, Rock Island, Missouri Pacific, M. K. & T., Burlington, Union Pacific, and such other lines as came in there. In handling these matters, we ran up against the proposition of these contracts—the railroad contracts—limiting the carriers' liability. There are provisions in the contracts requiring notice of filing claims, etc., and a few of the railroads in their legal departments occasionally would attempt to stand on those provisions that they had placed in their contracts. But in our State courts and in our State statutes all through the western country there, including Missouri, Kansas, Oklahoma, Texas, and Iowa, provision was made that any of the limitations in the contracts that limited their liability or attempted to limit their liability

were void limitations. So the matter went on in that way, simply treating those contracts as receipts for the stock and an agreement to carry them.

Those limitations were disregarded by our courts; they were disregarded by the claims departments of the railroads, and they were disregarded by the legal departments of the railroads. We went on through that state of conditions and made adjustments until in 1913, in very able opinions by Justice Lurton, who went over the whole situation, and, as I understand it, interpreted the Carmack amendment in this wise: That prior to the time that Congress attempted to legislate on these matters of the liability of carriers, their responsibility, or the relation between the carrier and shipper, was left, as all other matters theretofore had been, with the States, with the State statutes and the State courts, and that was followed out. But in that case he said, "Now, Congress has taken hold of this, and said the railroad or carrier shall issue a contract or receipt and shall be liable for any loss under the contract or receipt caused by it or any other carrier, etc.," making it possible for a man who shipped over two or three lines of railroad, and, perhaps, through three or four different States, to sue at home instead of running all over the country to find the one that was negligent. They held that inasmuch as Congress had said that they must issue a contract, Congress had taken charge of the matter, and that the only cause of action a man had was under that contract.

Then the Interstate Commerce Commission in interpreting the right that the contract gave to the railroads expressed the view that they had no right to waive any provision of any of their contracts or bills of lading so as to make any discrimination or give a preference to one man above another. The outcome was that the decisions of our State courts, which for 25 or 30 years or more had been working under and declaring the common law as it existed there, as fixing the liability of the railroads, were practically set aside by this decision, and it made it necessary under that interpretation of the Carmack amendment for everything to be handled through attorneys going before the Interstate Commerce Commission. Take, as an illustration, the Harriman case: A man whose cattle were injured in a wreck because of the negligence of the railroad lost $10,600 worth of cattle. He secured a judgment in the State court; and it was upheld in the supreme court of the State, but the Supreme Court of the United States said that because he had not complied with the provision in that contract requiring him to file his suit within 90 days it would be set aside, and he could not collect his $10,600.

Mr. CULLOP. In that case, did the court pass on the question of whether or not the 90 days was a reasonable time?

Mr. FARRAR. They did. That is, they said it appeared to be a reasonable time.

Mr. CULLOP. Was there any attempt on the part of the plaintiff in that case to show any reason why he did not file his suit within 90 days, or why the 90 days was not a reasonable time?

Mr. FARRAR. Yes, sir; the plaintiff in that case, as I understand it, said that the railroad did not pass upon that claim within 90 days, and that he did not know that he had to sue by that time. They

answered that by saying, "Well, this limitation was put in there by the railroad and it would have the effect of making the railroad pay its liability quicker." But they did not pass on the claim in 90 days——

Mr. CULLOP (interposing). I asked Mr. Cowan a question a moment ago, and I want to correct what I said because I was thinking about the law as it was before the Carmack amnedment was passed. Now, I want to ask you this further question, as you seem to be well posted on it: Under the present law, still upholding the Carmack statute, but granting the right of the railroad company and the shippers to write in their contracts provisions limiting liability, could the shipper go to the connecting carrier, if he could trace his loss to it, and sue there under the common law?

Mr. FARRAR. He could prior to the decision of 1913.

Mr. CULLOP. There is a decision now——

Mr. FARRAR. A decision setting aside the statutes of the States and the common law of the States, and they have only one cause of action, and that is under the contract. That precludes him from suing under the common-law liability. My idea of this amendment, as I have studied it over sometime, is that it simply declares that the railroad or carrier shall be liable for the full amount of the loss, and leaves the matter in such shape that, being liable for the full amount of the loss, it preserves and utilizes all of those State decisions and rulings of the State courts concerning those things. Ninety-five per cent of those cases, if litigated at all, must be litigated in the State courts. Now, here is the principle that appeals to me: I think all of those carriers doing an intrastate and interstate business—take, for example, a man shipping live stock from Cameron, Mo. (and I mention that place because I am acquainted in that vicinity)—he ships, we will say, two cars of cattle, one from Cameron, Mo., over the Burlington Railroad to St. Joseph, Mo., and one over the Burlington to Kansas City. It is about the same distance and the shipments would be made at exactly the same rate.

The cars consigned for St. Joseph, Mo., go down the river on the St. Joseph side to their destination, while those consigned to Kansas City, for the convenience of the railroad company, are switched around and go about half a mile down to the stockyard and they go in on the Kansas side for about 100 yards over the line, and are then brought back into the yards on the Missouri side of the line. Now, that latter is an interstate shipment. If one shipper were the owner of these two cars of cattle, and if both cars of cattle were destroyed through the negligence of the company, he would have to commence his suit against the same railroad for the loss of his shipment to St. Jospeh under the State statutes and the public policy of the State and the decisions of the State courts under the common law, while in the case of the other carload he would be restricted to any limitation that might be written into that contract. That is, he would be restricted to such limitations as these: That he would give notice of his loss, that he would give notice of his damage before the stock had become mingled or within 24 hours, and that if he fails to give this notice, he waives his cause of action; that he must file his claim within five days, and if he does not, he waives

his cause of action, etc., or that he must file his suit within 91 days, or six months, as is the case with some of them, or, if he fails to do this, he thereby waives his cause of action. There are all sorts of conditions that affect the matter in the case of the interstate shipment.

Mr. WRIGHT. In the Croninger case was it not held that where those provisions are subject to the Interstate Commerce Commission as to their reasonableness, until they were condemned by the Interstate Commerce Commission, they are presumed to be reasonable, but that they might be submitted to the Interstate Commerce Commission?

Mr. FARRAR. Not in the Croninger case. The Croninger case followed the case of Hart *v.* Pennsylvania, which had declared the express company rule. In following that, the Croninger case went further and said that if the contract was a fair, open, reasonable, and just contract, and had been fairly entered into, it should be the contract of the parties. That is the holding in the Croninger case. Now, I say make that a matter to be submitted to a jury—that is, the question of whether it is a fair, just, and reasonable contract, and all those things. But the Harriman case came along, and the decision in the Harriman case approved everything concerning the jurisdiction of the State courts and the State statutes. In the Harriman case it was held that this contract, if it was on file with the Interstate Commerce Commission, and if it was signed by the shipper, is the contract of the parties, if, on its face, it appears to be reasonable and just, claiming, however, that this is a matter of law for the court to determine. You would infer from that, and there is such a declaration in the case, that if the shipper is not satisfied with the contract, he could go before the Interstate Commerce Commission and have it passed upon.

Mr. CULLOP. In either of the cases that you spoke of was there any question raised as to whether or not the railroad company and the shipper could contract against the negligence of the company?

Mr. FARRAR. I do not call that to mind. I do not call to mind anything on that particular proposition.

Mr. CULLOP. I would like to ask this further question: Do you think that the railroad company could make a contract to pay a specific price for the loss of property which occurred through the negligence of the company?

Mr. FARRAR. Yes, sir; on the ground of the Hart case—that is, on the ground of estoppel. It was upon the ground that it would be a fraud on the railroad company for the shipper to give them a $150 package of freight, boxed up, and put a valuation on it of $5, paying a 25-cent rate, when the rate on a $150 package was higher. If he did that he would be afterwards estopped from coming in and claiming full value.

Mr. CULLOP. Would not that only affect it as to a contract for delivery? Then, he would sue on a contract; but when the loss occurred through the negligence of the company by virtue of a wreck or some want of due care, would the obligation then bind?

Mr. FARRAR. It is exactly the same, as I understand the decision. I understand that is the law, as we have it now, concerning live stock, and that is what I am particularly interested in. I do not claim to

know much about the carriers of other freight. Carriers are not insurers of live stock, and it is not alone on the insurance feature, but it is on the question of negligence also that they are limited as to amount.

Mr. CULLOP. The question is, Are the companies not prohibited by public policy from contracting against their own negligence?

Mr. FARRAR. Yes, sir; but when the Supreme Court of the United States says that this is a contract between the parties and that the only cause of action we have is under this contract, then it is not a question of public policy, but it is a question of that contract prepared by the railroad and put before the shipper to sign.

Mr. CULLOP. Is that decision you refer to based on the specific facts pleaded in that case?

Mr. FARRAR. That is all the courts had to pass on in that case, and the other question naturally could not arise, unless there was some——

Mr. CULLOP (interposing). Does the decision cover the broad field so that there can not be any misinterpretation of its scope?

Mr. ESCH. Did not the Supreme Court state that the estoppel worked because the shipper had his discretion as to two rates, and that, taking the lower rate, he could not then come into court and make claim that he was entitled to full damage?

Mr. FARRAR. Yes, sir. That is following the principle in the old Hart case, but enlarged on, as the Harriman case has a broader scope,

Mr. CULLOP. That is, where they sued on a contract?

Mr. FARRAR. I did not read the pleadings in the case to know how it started, but this case was brought at common law. Wherever they have a contract, if carriers are able to get it in they do so. It is a question of contract if it is gotten in. I do not think Billy Williams sued on a contract in that case.

Mr. WRIGHT. I will state to you that in the other case that was the defense which was made—that it was a contract and would be good as a contract, but that it could not limit liability on account of the negligence of the carrier. But the court decided the case the same way on account of the estoppel set up by the other party.

Mr. FARRAR. In the next place, you can not know what the work before the Interstate Commerce Commission amounts to in the case of the individual shipper or a bunch of shippers. I have had some experience with that, and I had just started to give you my idea of what it amounts to in some cases to have to go before the Interstate Commerce Commission. I had two shippers from Colorado who were complaining that they were overcharged $15.40 because the railroad company had assessed their freight at Kansas City on the basis of hoof or actual sales weights, less the arbitrary allowance, instead of assessing the freight upon the railroad-track scales weights, there being no tariff authority for assessing it in the way they did. There was also another man, from Emporia, Kans., who had complained that on five or six cars he was overcharged in like manner, the overcharge amounting to some $16. On January 27, 1913, I went before the Interstate Commerce Commission with my petition asking for that reparation. When the time came for the hearing I found that they had the Missouri Pacific commerce counsel there, the Chicago &

Alton commerce counsel, and half a dozen other attorneys from Chicago, St. Louis, and other places there.

They insisted that the only fair way to get at that would be to have exhibits showing what class of live stock or cattle had come in during the year 1912, what the railroad rates were on them, and what the different rates would be when figured out. I simply had to say to the examiner that I was asking for $31 and that they were asking me to furnish exhibits that would cost $500, and that I could not do it. Then, the examiner ordered the railroads to furnish the first part of the exhibit as to the cars, shippers, and railroad weights of the live stock. The Kansas City Live Stock Exchange intervened in the case at that point and agreed to furnish the other side of the exhibit, they supplied the selling weights from their books and figured it out. That exhibit cost the railroads $530 and the exchange $750, or $1,280 in all to find out whether a man should have $50 or not.

Mr. DECKER. Was not the reason you came up before the Interstate Commerce Commission not on account of the $30, but in order to set a precedent for such cases, and is not that the reason why the railroad authorities paid $530 and the Kansas City Stock Exchange $750—that is, because you were seeking to establish a precedent?

Mr. FARRAR. I went up there because of my case. The question of precedent influenced the live-stock exchange. They, with the railroads, had conference committees, etc., working on that, but I had nothing to do with it. I took that up because we had some loss and damage claims for these particular shippers. It is true that it does establish a precedent that would apply to other shippers who have overcharge claims and want to get their money back, but I had no other shippers complaining at that time and I had no other arrangement for anything except the claims for these two shippers. In that case the establishment of a precedent might have been of such importance that the railroads should have doubled up on it and paid the expense. I have known of other instances where claimants were asking for small reparation and where the expense of going before the examiner made it almost prohibitive to the shipper. Under these live-stock contracts one man may ship cattle over the Santa Fe, maybe from Texas, and another man may ship cattle over the Rock Island, and there would be different provisions in the contracts. Now, unless some organization can take the matter up before the Interstate Commerce Commission and work out the whole proposition each shipper must go in and take his chances.

Mr. DECKER. What is there in this bill that would do away with the multiplicity of contentions as to the amount of the freight?

Mr. FARRAR. About the amount of the freight?

Mr. DECKER. I do not mean the amount of the freight, but the amount of damages to be paid.

Mr. FARRAR. There is this in the bill, a provision that they shall be liable for the full loss.

Mr. DECKER. Yes; and that is a question for the jury always.

Mr. FARRAR. As to what the actual loss is.

Mr. DECKER. Does that do away with the multiplicity of suits?

Mr. FARRAR. I am talking about——

Mr. CULLOP (interposing). Under the present bill of lading it is not a question of damages, but it is a question of what they have agreed upon.

Mr. DECKER. He was explaining about the present law imposing a great deal of hardship, and I wanted to know how this would avoid that.

Mr. FARRAR. By making them liable for the full loss or the actual value. That simply puts it as they have always been at the common law, and the man goes into his State court. As I said, in 95 per cent of these cases the Federal courts have no jurisdiction on account of the amount involved, and shippers simply go ahead, as they have been doing, and collect the claim. It is really making the liability as it existed at common law. The latter part of the amendment calls attention to certain lines, and they can go so far and no further.

Mr. WRIGHT. Is it not a fact that this whole question of limiting the liability of the railroads has been submitted to the Interstate Commerce Commission by the various associations in the western territory and is now briefed and ready for argument before the Interstate Commerce Commission?

Mr. FARRAR. I do not think so.

Mr. WRIGHT. You were a witness in the case?

Mr. FARRAR. Yes; but I do not think the whole question has been submitted to the Interstate Commerce Commission by any means. I think they have only one phase of the contract, the question as to whether or not the values named in the contracts are fair. That proceeding is a proceeding under the present law.

The CHAIRMAN. Why do you not put the whole matter before them and ask them to correct this practice? They have the power to do that.

Mr. FARRAR. They would have the power to make any kind of a reasonable contract or to compel them to make any kind of a reasonable contract. That is true. But that feature of the matter which has been taken up has been taken up under the present law and under the present decision, simply saying that the values now named on ordinary live stock as their basing values are too low; that much live stock are much higher, and that the rates are commensurate with their liability at full value, and the railroads are admitting in that proceeding that the values are too low according to actual values of this day; but if you increase the values they want an increase in rates. Now, that has not anything to do with the question of their liability for full value.

The CHAIRMAN. The commission now assumes, correctly, I think, plenary authority over bills of lading, and this the committee so intended by the act of 1910, and it does look to me that it would be proper to go before the commission and lay this matter before them and have them to correct this entire practice.

Mr. FARRAR. This matter was taken before them at different times and from different angles, and the commission decided several times that they had nothing to do with limited liability; that all they had to do with was the rate, and Commissioner Lane issued at one time a circular about the proposition of limited liability, and Commissioner Clements issued another one, which said, "We are not going into the question of limited liability, because that is a matter that must be handled in the courts. We only fix the rate."

The CHAIRMAN. But they can deal with the form of that bill of lading and correct a bad practice connected with shipments whereby they limit their liability.

Mr. DECKER. I want to ask you another question, and I assure you that my mind is entirely open on this proposition. I never heard of it until the other day, when it was brought up by the gentleman who spoke before you. In your opinion and from your experience—and I know from what you have said you have had a lot of it—could you not, for instance, suggest some kind of contract that could be entered into that would be fair to all parties, and would it not be fairer to the little fellow that you all are talking about and the poor man to rely on a common form of contract that you could get up and have submitted to the Interstate Commerce Commission than it would be to have this little fellow you speak of come in every time and prove the value of his stock and where it was burned up by a wreck? In other words, could you not determine the value of a load of steers when they were put on the car better than you could after they were thrown into some river as the result of a wreck?

Mr. FARRAR. That would be possible if each railroad agent had power to contract and each man could go in and make his contract man to man. There could be a contract made based upon the conditions concerning that particular shipment which would be fair; but to lay down a contract for all the shippers and a certain system of railroads or on all the railroads of a certain territory, or on all the railroads of the United States, I say that conditions are too varied and the circumstances are so different that it is pretty nearly out of the question. I could probably write a contract that would suit the few people I come in touch with and make it fair for them, but considering the multitude of railroads, to make it fair to them and to all the shippers would be a task, I think, too hard for me to undertake.

Mr. DECKER. Let me complete my question: I would like for you to give us the benefit of your experience in handling these 18,000 cases. For instance you say that under this law, before these decisions that you have referred to were made, every man had the right, according to the laws of Missouri, Kansas, Oklahoma, etc., to come in and get what he claimed was the full value of the freight. Now, you have represented 18,000 cases, and I want to know how you ascertained the amount of damages in those different cases. Please give us some idea of that. We will suppose that a carload of steers were killed in a wreck and burned up, or whatever may have happened to them, and the claim for the loss comes in to you. How would you reach an equitable adjustment of the loss of these steers which were killed or burned up? How would you reach an adjustment that would be equitable to the railroads and to your clients also, as well as to the public, because the public must finally pay it? Now, just explain that to us.

Mr. FARRAR. In the first place, the bulk of these claims and complaints are not based upon carloads of stock that have been wrecked or burned up. The claims are based on one head, two head, or five head of stock in the case of the ordinary wreck. The ordinary wreck will kill three or four or five head of stock out of one car. It is very unusual to get a car of cattle or hogs completely killed in a wreck. Now, the balance of those animals will come into market and will be sold on the pound basis, and the claim for the dead animals would be based upon the average weight of those remaining. It would be based upon the average value of the other stock; that is, stock of the same kind sold in the market at Kansas City. A good many of these

shippers can not tell within $4 or $5 a head at the time they load the cars what their stock will bring on the market, and these claims are based upon the actual value—that is, the average value of the same kind of animals coming in the same shipment on the same day on which the animals claimed for should have come.

Mr. DECKER. Well, how do you get at it? Where do you get the evidence?

Mr. FARRAR. We take the sales of the balance of the shipment as they are sold on the open market.

Mr. DECKER. The claim is based on that?

Mr. FARRAR. Yes, sir. If the stock was in damaged condition, some allowance would be made for that—for shrinkage—probably 75 cents a head would be allowed for the damage to them. The railroad will pay for the damaged animals and pay for the killed animals, and then on the other animals 75 cents a head, or some small item, will be allowed.

Mr. SIMS. I got the idea from your statement that some of those restrictions put in bills of lading were more damaging to the shipper than the limitation in the first instance.

Mr. FARRAR. Yes, sir.

Mr. SIMS. Is it your admission or contention that under the present law such arbitrary and unreasonable conditions and stipulations put into these contracts so as to practically amount to a denial of justice are valid and can be enforced at law?

Mr. FARRAR. Yes, sir; and they have been enforced.

Mr. SIMS. You spoke of a railroad that extended out to where shipments originated in Missouri and on through to Kansas City. You stated that they ran a short distance across the line, and that the stock were then carried right back into Kansas City, Mo.

Mr. FARRAR. Yes, sir; and that is an interstate shipment.

Mr. SIMS. That gives it the character of an interstate shipment?

Mr. FARRAR. Yes, sir.

Mr. SIMS. Was that a subterfuge or a contrivance on the part of the railroad for the purpose of giving the shipment an interstate character?

Mr. FARRAR. No, sir. The conditions are such that it is most convenient for the railroad to haul it that way.

Mr. SIMS. So as to give it the benefit of terminal facilities.

Mr. FARRAR. Yes, sir. It could be arranged a little differently, but that is the most convenient way. It is upon that ground rather than because of any difference between interstate and intrastate shipments.

Mr. SIMS. Then it is not a mere contrivance?

Mr. FARRAR. No, sir. I did not mean to say that it was a mere contrivance, because it is for the convenience of the carrier. It is done that way. Now, let me give you an example——

Mr. SIMS (interposing). Do you admit that such a convenience as that, availed of merely for the benefit of the carrier, constitutes a transaction in interstate commerce that gives the entire transaction the legal status of an interstate shipment?

Mr. FARRAR. Yes, sir; there is no question about that. Let me give you an example: There was a man who shipped stock from Idaho Falls on the Oregon Short Line, and when he got to Ameri-

can Falls he found that his stock had been damaged by rough handling. He complained to the yardmaster at American Falls of the condition of the animals, and the yardmaster said to him, "When you get down to Ogden or Salt Lake City, you take that up with the superintendent; take up the matter of your claim with him." When he got to Ogden, he hunted up the superintendent and the superintendent said, "We do not handle those matters here; you go on and when you get to Omaha put the claim in with the agent of the railroad down there." When he got to Laramie he made the same complaint, and they told him to go on to Omaha with it. He went to Omaha and the live stock agent at Omaha went over the matter with him and said, "Your complaint is with the Oregon Short Line, and that is an independent line from the Union Pacific. That is a matter that you will have to take up with the freight claim agent of the Oregon Short Line at Portland, Oreg. I will give you his name and when you get home write him a letter."

He went home, and the first thing he had to do was to get the necessary papers to start his claim—the unloading certificate and the duplicate expense bill. He had to have them sent to him, and when they came he put in his claim at Portland, Oreg., for the sum of $600. The matter came on for trial and was removed to the Federal court, and the Federal court decided that because he did not file his written claim within 10 days he had no cause of action, whereas he had made complaint all along the line.

Mr. CULLOP. Those facts should have been presented to the court.

Mr. FARRAR. They were presented to the court. That is in the opinion of the court. It is stated in the opinion of the court that he did all of those things. That is where I got the information. I know nothing about it except what I read in the Federal Reporter.

Mr. DECKER. If that had been presented to the Interstate Commerce Commission, do you think that they would have approved a contract limiting him to 10 days?

Mr. FARRAR. It was simply this: The Carmack amendment was intended merely to put the burden on the initial carrier, and that was to be under the existing law as it stood. Now, I think that ought to be amended so as to make it so plain that nobody can misunderstand it, keeping the liability on the carriers just as it was at common law. Then leave the question of freight rates and such matters to the Interstate Commerce Commission. That is the entire proposition.

Mr. DECKER. Is it your contention that there should be no limitation on the time within which they should file notice of claims?

Mr. FARRAR. I say there should be no limitation as to negligence.

Mr. DECKER. Nobody claims that there should be as to negligence. I am speaking of the limitation on the time within which they shall claim for negligence. There is no legislator, lawyer, railroad president, or anybody else who believes that the railroad company should be relieved from liability for negligence, and I do not see why that is talked about so much. What you are contending for, as I understand it, is that there should be no limitation as to the time within which the claim for negligence shall be made.

Now, let me ask you this question: If that limitation should be removed, would it be fair to the public, who have to pay the freight—

and we should keep that in mind always—or to the railroad company that a shipper should be allowed to have his claim run on for six months before giving notice of it, and then sue the railroad when the evidence was gone and perhaps claim ten times as much as he was damaged? Do you not admit that there ought to be some reasonable time stipulated? Of course I think anybody ought to admit that 10 days is too short a time, but you would not say that he should not be required to put in his claim within a reasonable time.

Mr. FARRAR. I agree with you that it ought to be a reasonable time.

Mr. DECKER. Suppose we take the case of that man you mentioned who shipped from Idaho Falls. He goes on, as you say, and proves that his stock had been damaged, but he made his claim all along the road. It does not appear that he said anything about it to the proper authorities. If the claim is presented to the proper authorities, then the railroad sends the proper officials to trace the matter, ascertain the facts, and determine whether there is any truth in the claimant's statement. The shipper you referred to, according to your statement, spoke to three different men along the line of the road.

Mr. FARRAR. And the train master and superintendent ought to have had a record of that. That should have appeared on their daily record. That is a record that the railroad officials would get when they went to investigate the facts.

Mr. DECKER. Would it not be better to start the claim within a reasonable time, so that when the adjuster comes to investigate the claim he can ascertain the facts—that is, at a time when the people handling the stock will remember about seeing those hogs, we will say, that were battered up, or the cattle that were abused?

Mr. FARRAR. That is a common-law requirement, that it be reasonable in all respects; that the notice of the claim be given within a reasonable time. But do not allow any carrier to put in its contracts stipulations and establish safeguards or rules that might apply fairly in one case but not in another. Of course I say that a man ought to give reasonable time. They can go in any court and raise the question under the common law as to whether there was a reasonable time allowed.

Mr. DECKER. But when you leave that question of reasonable time open, does it not give rise to a mutiplicity of lawsuits about little matters, something that all men who have the interest of the railroads and of the poor people at heart want to avoid? That is the reason you had 18,000 claims coming to you. That was on account of this multiplicity of little claims.

Mr. FARRAR. Yes; but out of those 18,000 claims I only tried four lawsuits.

Mr. DECKER. I understand that.

The CHAIRMAN. Is there anything else?

Mr. COWAN. I wish to file some statements that we have made up practically from the record of cases that have been before the Interstate Commerce Commission. I have here a statement of mine, which I stated before the committee the other day I would like to file and have made a part of the record.

The CHAIRMAN. Very well, they may be inserted.

(The matter referred to is as follows:)

WASHINGTON, D. C., *September 24, 1914.*

Hon. WILLIAM C. ADAMSON,
Chairman, and Members of Subcommittee
Interstate and Foreign Commerce, House of Representatives.

MEMORANDUM OF ARGUMENT IN FAVOR OF CUMMINS BILL (S. 4522).

1. Only a few commodities of commerce have freight rates fixed according to value, but in the classification of the thousands of articles of commerce we have rates fixed according to the class in which the particular article is placed. In official classification territory there are six classes, and the rates are graded from first class down to the sixth class. Some articles, however, take double first class while other articles take a percentage less than the class to which they belong; for example, cement takes 85 per cent of the sixth class rate while feathers take double first-class rate. In the western classification there are 10 classes, one to five and then classes A, B, C, D, and E. The object of the classification is to make rates which are supposed to be relatively fair dependent upon the bulk of the article and upon the value. All rates are made on the theory of being as high as traffic will bear and still move. The reason for this is that the railroad company is in business to make money and to make the most money out of the business.

There are a few articles, for instance, certain ores, live stock, household goods, immigrant movables, and a few other things on which the shipper must declare a value in order to get the ordinary rate.

Previous to the decisions rendered last year by the Supreme Court of the United States the contracts and the tariffs prescribed a limitation of $50 per head for steer, $30 for cows, $10 for calves, $10 for hogs, and $3 for sheep were disregarded, because it was held by the courts that the railroad company could not contract against its own negligence, and the Federal courts enforced the rule of the State statutes which prohibit railroads from making a contract to exempt themselves from their own negligence.

The Carmack amendment, so called, to the Hepburn bill of 1906 required the railroads to give the bill of lading or receipt and declared that the initial carrier should be liable for whatever damage happens to the freight, no matter over what line or lines it might be transported. The main object of Senator Carmack in offering this amendment was to make the initial carrier liable and prohibit contracts limiting the liability of the carrier, just as the laws are in the various States of the West and South.

It would be useless consumption of time to discuss the wisdom of the decision of the Supreme Court in the various cases construing this amendment; there is no purpose here to criticize the court, but, inasmuch as the Carmack amendment did not accomplish that which I am safe in saying every member of the committee thought it would accomplish, we may point to the result it had.

2. The fact that the railroads may and do quote in their tariffs and shipping contracts a limited liability, which is arbitrary and is printed by them and which the shipper has no chance to disregard, works out the rankest and most outrageous discrimination and results in rebating in a fashion that ought to shock the conscience of any legislature. For example, a farmer who has bought or raised a carload of cattle or hogs, or two or three carloads, and who has fed his entire crop and has put into these animals the result of a year's work, is forced by these railroad contracts and tariffs to assume the liability for the negligence of the railroad company in transporting these animals to market. He has no recourse, and neither has the railroad, because, having published in their tariffs that they will only allow $50 for his steer if killed by their negligence, that is as far as the railroad company can lawfully go. The steer is worth $125. If he loses one carload he has lost his whole year's work. Another man comes along who ships a trainload, which very frequently happens, and an accident happens which delays that train and kills a number of head, and the shipper misses a market, and the market declines, and there is a shrinkage of weight in all his cattle in the train. He puts in a lump-sum claim to the railroad company. Of course, it does not matter that the shipping contract limits the value per head, because he is collecting the damage on three or four hundred head. The railroad is anxious for his business, and they proceed to pay him a lump sum, whereas the poor man, with his whole year's work in two

or three cars of live stock, even on the same train, can not collect one-half of the value of his loss by the negligence of the railroad.

Now, in nearly every Western State, where shipment is made from one point to another point within the State, this rule does not apply, because the legislatures of these States have prohibited the railroads from limiting their liability. This has to be done in order to protect the individual against the all-powerful corporaton which he must patronize. Congress intended to do it by the enactment of the Carmack amendment. Now we come along with the Cummins bill, which has passed the Senate, to so amend the Carmack amendment as to afford that protection which the public is entitled to against the railroad corporation which the shipper must patronize in order to live.

3. In answer to the suggestion that the Interstate Commerce Commission has the power to prescribe regulations for the railroad I wish—and that with great deference to the Interstate Commerce Commission—to say that the Interstate Commerce Commission has been loaded down with so much work, and the multitude of duties has been so heaped upon that tribunal, that they can not perform the office which many of us thought would result; that is, to represent the public. What has happened is this: The commission has become a tribunal before which a shipper may "measure swords" with the railroad company. The ordinary shipper, with a small amount of freight or a few cars of his farm products or other products, can not afford it. The machinery is expensive; it requires too much; and so the shipper would rather suffer whatever loss happens to him than to undertake the case, which would cost him more than all the freight he would pay on his few cars of products of his farm or ranch and probably as much more as the value of those products. A few large organization shippers can proceed before the commission, but the commission, as before mentioned, has so much to do that the delay rendered necessary leads the shipper to forego the chance of relief.

The thing for Congress to do is to prohibit the railroads from limiting their liabilities or leave with the shipper as a fair show in which he can not be forced into a contract or submit to some tariff that is unfair in that particular.

4. Now, so far as the matter of rates is concerned this committee has nothing to do with that. It is not making rates. It is fixing the equality of conditions, and if the railroad companies ought to have different rates according to the value and risk incident to the transportation of particular articles; that is a matter in the first place for them to prescribe in their tariff, and in the second place for the Interstate Commerce Commission to regulate and not for this committee to determine. What this committee ought to determine is that there should be fair dealing between the shipper and the railroad company by prohibiting the railroad company from forcing a contract upon the shipper to deprive him of his property.

5. There are a few animals of extraordinary value; for example, race horses and pure-bred cattle and the like, but there is not the slightest reason why the railroad company can not prescribe a tariff rate applicable to the different classes of cattle just as they do with the different classes of freight. It is amazing to hear railroad men claim that because they ship beef cattle at a certain rate that, therefore, they must ship fine bulls at the same rate, or that because they ship cow ponies at a certain rate they must, therefore, ship race horses at the same rate. Throughout the western half of the United States there is to-day one rate on stock cattle and another rate on beef cattle, one rate on horses and another on cow ponies. There is a rate on sheep and a rate on hogs; there is a rate on calves, and all these rates and the minimum rate on the car are different. There is another rate on fine bulls. It is perfectly absurd, and is generally quoted by lawyers who know nothing about tariffs to claim that it is impracticable to fix a rate or system of rates for the various classes of live stock or other traffic.

6. The discrimination which results from the application of this rule of the railroads can not possibly be avoided. One carload of cattle in the same train is worth $20 per head, another carload is worth $125 per head, the rate is the same in both cases. The railroad company can, with an apparent justification, pay $50 for the $20 cattle while it can not pay more than $50 for the $125 animal. But if the shipper happens to have a large number of cars in the train then the railroad company can settle on such basis as satisfies the damage claim agent.

7. The conclusion following what has been said is that a railroad company should not be permitted to limit its liability for its own negligence and thereby

shift it upon the shipper. The amount of the rate is an entirely dfferent proposition. Let the railroad company have the rate that is commensurate with the service and risk. This committee would, however, be surprised to know that on average business of the railroad company for loss or damage to all live stock does not exceed $2 per car, while to other freight it will average near $1 per car. The additional amount which would be necessary to collect per car in order to pay the full value instead of the limited value is proved to be less than 10 cents. It may be said, therefore, it is unimportant. Such is not the case. It is important because of the misfortune that falls on the particular individual.

The point about the whole matter is that these rates have been made and were in existence for many years when the railroads assumed a part of their full liability unaffected by the affect of limitation in contract shipments. The rates have generally been increased; certainly not reduced, and now it is sought by the carriers to place the responsibility on the unfortunate shipper who happens to have an accident through their own negligence. The previous rates and the existing rates embrace and comprehend the full responsibility. As an example, it applies now in all State shipments in the western half of the United States and generally in other parts of the country where there are any live-stock shipments.

Congress can afford to act justly in the matter of rates for the Interstate Commerce Commission to decide when the subject comes up before them for decision. Congress can not assume that the small shipper has the means of protecting himself against laws which have been pointed out by resort to the Interstate Commerce Commission or any other tribunal. It would cost the shipper more than it is worth to undertake to do it.

[Before the Committee on Interstate and Foreign Commerce. In re The Cummins Bill (S. 4522). Sept. 24, 1914. Extracts from hearings before the Interstate Commerce Commission at Colorado Springs, Colo., July, 1914. In re Iowa State Board of Railroad Commissioners et al., complainants, *v.* The Atchison, Topeka & Santa Fe Railway Co. et al., defendants. Submitted in connection with the argument.]

At the hearing in the case of the Iowa State Board of Commissioners et al., against the A., T .& S. F. R. R., defendant, which was held before an examiner of the Interstate Commerce Commission in Colorado Springs, Colo., last July, Mr. J. Walter Farrar, of Kansas City, Mo., called the attention of the examiner to the discriminating effect of the limited liability clause of the railroads in their contract. He showed, for instance, 15 large, fat steers in a car, weighing 24,000 pounds would be subject to a freight rate of $60 per car. Those animals had an actual value of $100 each, the total value of the carload being $1,500. Now, in case of total loss, under the limited liability contract of $50 per steer, the carrier would pay $750 and the shipper lose $750. But, if another car containing 20 fat steers of the same total weight, and for which the same freight charge was exacted, these steers being actually worth $75 each, or a total value of $1,500, should they be lost the railroad company would pay $50 per head or $1,000 for the 20, and the shipper would lose only $500. Again, if another car containing 30 head, weighing 800 pounds each, and paying exactly the same freight rate, the value of the animals being $50 each, the total value of the carload being the same as in each of the other cases, upon the wreck of that car the shipper would collect the full value, or $1,500, at $50 a head.

In reference to the record which is on file with the Interstate Commerce Commission, pages 458 et seq., a number of instances of the very apparent discrimination which is possible under the limited liability clause which the railroads incorporate in their bills of lading and contract. And, he also called attention to that if animals under similar conditions were shipped from a point in the State of Kansas to Kansas City, Kans., that the full value of all lost animals could be collected under the Kansas law for the reason that the transaction would be entirely intrastate, the tracks of the Santa Fe Railroad being wholly within the State of Kansas.

In concrete form, after citing various instances of this kind, Mr. Farrar said (p. 463):

"Showing that the same man or various shippers from the same town, in the same train, under the same conditions, paying, part of them, $55 freight, others $60 and others $65, according to the amount they have over the minimum in the car, and the value of all their live stock being $1,500 each per car, one man would collect $500, another $750, another $600, another $750, two more $750, one $900, one $1,000, one $1,250, and the other $1,500.

"Those are cases—I took round number figures, but they are cases that happen every day in live stock shipments where two men come in on the same train under the same circumstances from the same town and pay the same freight and receive the same service where, because of the classification given in live stock under these values, one receives half of his loss and the other receives his full loss."

Mr. Farrar explained that he handles the claims of 40 different commission firms, out of the 61 or 62 that are engaged in business in the Kansas City Stock Yards. He testified (p. 468 et seq):

"From the observation in adjusting these claims with the various railroads and some figures given me by different railroad claim departments in the course of our adjustments and conversations, from my experience in the matter, I do not think that 20 per cent of the claims would represent the full actual value of the dead and crippled animals in the shipments. Or, on the basis of adjustment of claims, compromise basis, 15 per cent of the amount is paid for deads and cripples and 85 per cent for shrinkage, declines and food charges."

Mr. COWAN. And the other items you mentioned going to make up damages?

Mr. FARRAR. Yes.

Mr. COWAN. Now, this contract provides in case of steers $50. Are there or not a large portion of the steers shipped to market that come within the term "steers" that are under $50?

Mr. FARRAR. The larger part of the claims for deaths and crippled animals or damage to the animals or damage to the individual animal is less than the contract value; that is, including the cripples.

Mr. COWAN. Well, that does not fully answer my question whether there is a large number of steers of the poorer class and quality, of the younger steers, that are worth less than $50.

Mr. FARRAR. A large part of the steers and feeders from New Mexico and Texas and Oklahoma and common cattle run under the $50 valuation. I hardly think any of the cows to speak of, except in the stock cattle, will run under the $50 valuation. Even the canners now are and have been for a year or two of equal value with the contract.

Mr. COWAN. Now, if the railroad companies were responsible without this limited valuation for these deaths and cripples and escapes, etc., what percentage of the total loss and damage would that represent?

Mr. FARRAR. It would be less than 5 per cent, or the difference between the contract valne and the actual value—5 per cent of the amount paid on the claims. Take, for instance, the year 1911: I have seen the figures for most of the railroads on their claim adjustments, and a fair average of what it cost the railroads in 1911 was $2 per car for the loss and damage; some of them around $1.89, some $1.96, some $2.11, and some $2.13, and various amounts around there, but within—with the possible exception of one road—within 20 per cent of each other per car, and a fair average of that was $2 per car.

Now, I would say from my experience and from my figures—I took my claims of 1911, which were all settled—of 2,100 claims filed during the year 1911 on the various railroads—the Missouri Pacific, Rock Island, Santa Fe, Union Pacific, Burlington, Katy, Frisco, Wabash, Chicago & Alton, Kansas City Southern, the Milwaukee, Chicago Great Western, Q., O. & K. C., and St. Joe & Grand Island, and these various roads entering Kansas City—I filed during 1911 2,100 claims, and on those 2,100 claims I collected on a compromise basis with the railroads, in a few instances by compromise of suits, but mostly without suit, $62,926.98. Of that amount there was $11,177.15 paid for deaths, cripples, and damage to the animals. The actual value of those deaths and cripples that was paid for partially, if they had been paid for in full, would have amounted to $14,826 27.

Those figures include the entire claims, and all claims are cleaned up for that year, including horse claims and including all classes of claims on which railroads would not admit liability but would compromise on a basis of 50 per cent of the deaths and cripples, in many instances the full value of the deaths and cripples being less than the contract value.

Now, that figures the per cent of the deaths and cripples 17¾ per cent of the total amount paid, and the amount to increase it to pay the full value asked by the shippers in those claims would increase it 5.9 per cent; and eliminating from these figures the horse claims that were filed for damage to horses, and nearly all the claims filed are for injury to the animal—we do not have claims for shrinkage on horses and very few claims for decline in market—taking out the $1,116.25 which was paid for damages to horses, $819.50 of that was paid for deaths and cripples, and the value of the horses dead or crippled $1,274.50—

taking that from the total, it would leave the per cent of deaths and cripples on all cattle, hogs, and sheep 16¾ per cent, and the total amount to increase that to pay the total value asked would be 5.1 per cent.

Now, taking from those figures the claims that were compromised on a 50 per cent basis of the deaths and cripples, regardless of the contract valuation, on which I collected $791.44, on those claims where the claim was compromised on a half basis, taking that from the total amount it shows that the per cent paid on the claims other than the horse claims and the claims adjusted on a 50 per cent basis, regardless of contract, the payment for deaths and cripples was 16 per cent, and the amount to increase that to the total amount paid in order to pay the full value asked would be four twenty-fifths per cent.

Mr. COWAN. So, considering those figures as you have given them and the computations and the facts pertaining to the claims as you know them to be, and considering what you know with regard to the total loss and damage per car on live stock on those roads entering Kansas City, what would you say the amount would be if distributed on the average per carload of live stock?

Mr. FARRAR. For the railroads to assume full liability and compromise on the same basis they have heretofore, or pay the full value asked where they have admitted liability, it would not cost to exceed 8½ cents per car on the shipments moved during the year.

In response to a question as to his connection with an insurance company recently started to afford shippers an opportunity to insure against loss of animals in transit, Mr. Farrar responded that he is the agent for the insurance company at Kansas City Stock Yards in writing insurance on live stock in Kansas City. They commenced this business in February, 1914. (See p. 477, record.) Judge Cowan asked him to explain about that insurance—application, terms, etc. Mr. Farrar replied: "That insurance is 50 cents per car on cattle and hogs and 50 cents the single deck and 75 cents the double deck sheep. It does not cover horses, and covers the total loss by reason of collision, wreck, derailment, fire, and lightning." Asked by Mr. Cowan whether this insurance is regardless of the railroad liability, Mr. Farrar replied: "Those are the amounts per head that will be paid the shipper regardless of the value of his animal when the railroad company has upon investigation admitted liability for those causes named in the policy. The insurance company makes no investigation, but depends upon the railroad investigation and the admission of the railroad liability. If the railroads contest a case in court the insurance company, under the terms of the policy, would not be bound to pay anything until liability was established against the railroad. In case the railroad paid the full value of the stock lost, the insurance company still pays the same dollars per head regardless of what the railroad company pays and over and above what the railroad company pays."

Mr. C. C. WRIGHT. That is, you mean if the animals are worth only $40 a head——

Mr. FARRAR (interposing). It makes no difference what the animals are worth.

Mr. C. C. WRIGHT. You still pay $50 a head?

Mr. FARRAR. It makes no difference what the animal is worth or what the railroad pays. When they admit liability for these causes the insurance company pays $50 for a steer, $30 for a cow, $10 for a hog or calf, and $5 for sheep. For instance, on the wreck of the Rock Island in March in Iowa 219 sheep were killed. These were lambs that weighed 60 pounds and cost $4.20 apiece. The Rock Island paid $3 a head and the insurance company $5 a head. The shipper received $8 per head and the animal is worth $4.20 a head, and the insurance is 50 cents a car. The insurance company pays $1 per application for an agent in getting that, 10 per cent for an agent for handling it, 10 per cent to the stockyards company for collecting it, and then their expenses also out of the 50 cents per car, and carries the insurance.

A. E. De Ricqles, president and general manager of the American Cattle Co. and the general manager of the Live Stock Loan Co., in his testimony at the same hearing, which will be found on pages 108 to 178 of the record, testified that before the decision of the Supreme Court upholding the limited damage clause of the railroad company contract settlements were made, the railroads carrying the cattle owned by him and his associates invariably paid claims for damages demanded upon the basis of valuation and without regard to the limitation clause of the contract, but that since the decision of the Supreme Court they have not only limited payment for the full loss of the steer to $50, but that in several instances cited the agents of the railroad had,

without authority, reduced the minimum clause to $50, and yet the value of steers has increased rather than diminished in recent months. Mr. De Ricqles, in answer to questions of Mr. Wright, counsel of the railroad, said: "I can take care of myself, but you do an injustice to the 'little fellow,' and I am here in his behalf." He added that he was not at the hearing on his own behalf, but as a member of the National Live Stock Association, which numbers among its membership many of the "little fellows," and that it was in behalf of justice to the "little fellows" that he urged the Interstate Commerce Commission to compel the railroads to eliminate the limitation of liability.

Mr. Stryker, of South Omaha, Nebr., representing the South Omaha Live-Stock Exchange, testified (see p. 369): "Our members loan millions of odllars to live-stock growers and feeders, and to that extent we are interested in seeing that their loans are protected, and if, as is contemplated in the present live-stock contracts which have been upheld by the decision of the United States Supreme Court, this condition is to continue, the credit of the live-stock feeders who need to borrow money will, to a large extent, be hampered, and to the extent that the security of the man who loans the money is hampered his credit will be lessened." Mr. Stryker pointed out the wide difference in the value of cattle, especially finished cattle, between the limitation fixed by the railroad and the market price in the stock yards.

At the conclusion of the hearing Examiner Gutheim asked Mr. Wright if he desired to submit any testimony for the defendants, to which Mr. Wright replied: "The only question submitted to us was to make an advance in that valuation, and the suggestion was in accordance with his letter calling for the conference. There was discussion about the elimination of it, but when the carriers left there it was the proposition of increasing the minimum, and I offered the letter not for the purpose of the 1½ cents per 100 pounds, but for the purpose of showing that he called a conference and was asking at that time on behalf of this association simply an advance in that amount."

STATEMENT OF MR. A. F. STRYKER, OF SOUTH OMAHA, NEBR., REPRESENTING THE SOUTH OMAHA LIVE-STOCK EXCHANGE AS ITS SECRETARY.

Mr. Stryker. Mr. Chairman and gentlemen of the committee: Our organization represents the feeder and stockman, big and little, who handle live stock, which we think is one of the important matters that will be affected by the passage or nonpassage of this bill. As representatives of the shippers we want the common carriers to assume entire responsibility for the value of all the live stock they transport. The live-stock business is a rather peculiar one in that it is very largely done on borrowed capital. The little man and the big man largely use borrowed capital in their feeding operations. The feeder of the smaller bunches of live stock may be a renter who raises his crop of corn and hay and is enabled on account of having that crop to borrow enough money to buy a load or two of live stock. He puts his entire year's work and the entire crop of his farm into this load or two of live stock and then attempts to transport them to market as an interstate shipment. I might state at this juncture that in Nebraska the railroads are not allowed, by a clause in our State constitution, to limit their liability in any way. The shipper may be in Colorado or he may be in Iowa, and he makes a shipment to South Omaha, which represents everything he has on earth, his whole crop and a mortgage on everything he has. This live stock is destroyed in transit. The steers may be worth $150 apiece, but all he can get is a recovery of $50 under the contract and the standard rate of to-day.

We feel, gentlemen, that that provision is not as it should be. We feel that it hampers the man in his operations; that it tends to re-

strict his credit and in that way reduce his operations. That I believe covers about all we care to say. We think the justice of our position will commend itself to you gentlemen. We feel, as I stated before, that the railroads should assume entire responsibility for all of the value of the live stock they transport. I thank you.

Mr. DECKER. Let me ask you a question to see if you can help us out. Could you draw a contract that would enable this poor man who has raised his $150 steer, when he puts it on the train and sends it to Omaha and it is lost—could you fix it in some way so that in case of such loss he would get his $150 without having to send his claim in to some attorney to decide how much he was entitled to? Is there any way that could be done?

Mr. STRYKER. Yes, sir.

Mr. DECKER. How would you do that?

Mr. STRYKER. I would recommend the passage of the Cummins bill.

Mr. DECKER. Explain to us how that would settle it.

Mr. STRYKER. That will make the railroads completely responsible.

Mr. DECKER. I understand that; but you finally get down to the question of proof. Suppose he says his steer is worth $150 and the railroad company says it is worth $100. It will then cost him $150 to find out which is right, will it not?

Mr. STRYKER. No, sir; his commission man can tell within $1 or $2 the value of that steer in five minutes after he sees it.

Mr. DECKER. But the commission man may not see the steer. He may be lying down in a creek alongside the railroad.

Mr. STRYKER. He sees the balance of the steers in the car which usually reaches destination.

Mr. THORNE. Does not the bill show the weight?

Mr. STRYKER. No, sir; the hoof-weight system is followed.

By the hoof-weight system I mean that freight is assessed on the weight of the live stock in a car, as ascertained by the commission men after same has been sold and weighed on stock-yard scales. This weight being reduced by arbitrary fill arrangements agreed upon between the railroad companies and the representatives of the shippers.

Mr. THORNE. At the end of the shipment, I mean?

Mr. STRYKER. In some markets the track weight is ascertained.

Mr. DECKER. But the steer I refer to never reaches destination.

Mr. THORNE. But you know the weight of the balance of the steers that go into the market.

Mr. STRYKER. And you can approximate the weight of this animal very, very, closely and approximate his value very closely indeed. The matter of proof would be one easily obtained. You can get the proof as to his value. There is not much question about that. In olden times when we used to settle our live-stock claims on actual value, there was never any great trouble in proving what the animals were worth.

Mr. DECKER. Why could they not agree on what the steer was worth before they shipped it?

Mr. STRYKER. Because the average feeder in the country can not tell within even a number of dollars what his animal is worth until

it reaches the market. A fluctuation of 10 cents per 100 pounds on a 1,500-pound steer is $1.50.

Mr. DECKER. Suppose he always left a margin of $10, how much would that increase the freight on that steer?

Mr. STRYKER. That I hardly think is the question, the amount the freight would be increased on the steer. The difference in the value of the steer is what affects the shipper, whether his recovery is $50 or $150.

Mr. DECKER. I understand that, but he brings his steer there and he is in doubt whether it is worth $150 or $160; but suppose, to make himself safe, he says the steer is worth $160, how much would that increase the freight on his steer? If the Interstate Commerce Commission should require a contract of that kind, and he paid his freight according to that arrangement, who would be wronged?

Mr. STRYKER. As I have stated, and I will have to put it broadly, we feel that when the man offers his live stock for transportation to the carrier the carrier should assume entire responsibility.

Mr. DECKER. Everybody agrees to that. Nobody will dispute that proposition. We are just trying to get at the best way to make them pay for it.

Mr. STRYKER. I have suggested what I think is the best way.

Mr. DECKER. I am trying to get at your reasons. It seems to me that, even for this man you spoke about who has his all wrapped up in a steer, you are leaving it to an uncertain system of determining after the steer is destroyed what his value should be.

Mr. STRYKER. That has worked out successfully in years past.

Mr. DECKER. I do not know. Although I have not had large experience I have heard a good many complaints about the way that worked out under the old common law. I can pick out a good many lawyers in my country who have had experiences of that kind, and I know that when the poor man you speak of brings his claim to the lawyer he does not always get all his steer is worth at the end of the case.

Mr. STRYKER. I can not talk on the subject as a lawyer, because I do not know about that. I am not a lawyer.

Mr. CULLOP. Is not the basis of your complaint the fact that the railroad company writes in the contract a valuation of $50?

Mr. STRYKER. That is the whole thing.

Mr. CULLOP. And does not leave it to the agreement of the parties?

Mr. STRYKER. That is true.

Mr. DECKER. Then, why do you not go to the Interstate Commerce Commission and change that? Is not that the trouble?

Mr. STRYKER. We do not want to sleep on our rights at all. We want to take advantage of every method we have to see that the interests of the shipper are regarded.

Mr. DECKER. What efforts have you made to have the Interstate Commerce Commission change that? I can not believe we have an Interstate Commerce Commission, which has been eulogized so much, that would approve of a contract that would require a farmer to take $50 for a $150 steer.

Mr. STRYKER. The contract has the approval of the commission now. It is effective and the courts have upheld it.

Mr. LINCOLN. Mr. Chairman, may I ask the privilege of having Mr. W. H. Chandler, representing the Boston Chamber of Commerce, heard at this point?

STATEMENT OF MR. W. H. CHANDLER, REPRESENTING THE BOSTON CHAMBER OF COMMERCE.

Mr. CHANDLER. Mr. Chairman and gentlemen, I represent the Boston Chamber of Commerce and a number of New England shippers. I was on the committee appointed by former Commissioner Lane to revise the express receipt, and am familiar with the limited liability imposed by that receipt. We have a great many shippers who use the form of contract that was prescribed by the Interstate Commerce Commission in that case, but before I get to the question of the express receipt I will say that there is not a railroad tariff that I have ever seen that limits the liability of the railroad to any stipulated amount if the shipper does not want it so limited. With reference to this live-stock contract, we are not particularly interested in live stock, but it seems to us that if the live-stock contract itself were put into this record it would show that if a man had 100 steers and wanted to ship them under that contract, all he would have to do would be to declare the higher value and pay a rate in proportion to the extra valuation, and he would secure all the protection he required.

Now, aside from the live-stock contract, there are two standard forms of bills of lading in effect in the United States; one is called the "uniform" bill of lading and the other is the "standard" bill of lading. All published tariffs of freight rates are predicated upon the use of those bills of lading. These bills of lading limit to some extent the carriers' common-law liability, but if a shipper does not care to ship under that limited liability all he has to do is to give notice to that effect and the railroads will transport his property under the conditions imposed by the common law for 10 per cent extra over the ordinary rate. I am speaking now of general merchandise and not live stock. In other words, to illustrate, if a man is shipping goods taking, say, first class, Boston to Chicago, 75 cents, and he is not satisfied with the four months' notice required in case of claims, or any other of the conditions imposed by the bill of lading, and he desires to have his common-law rights observed, all he has to do is to so indorse his bill of lading and pay 10 per cent additional, which would be 7½ cents, and the railroads will do just what the gentlemen here are asking them to do—pay, in case of loss or damage, whatever the market value of the goods are at destination.

Mr. ESCH. That applies to commodities as well as to the class rates.

Mr. CHANDLER. That applies to commodity tariff as well as class rates. They are all subject to the provisions of the classification.

Mr. STEVENS of Minnesota. Suppose that is too much?

Mr. CHANDLER. That is a matter now before the Interstate Commerce Commission for determination.

Mr. STEVENS of Minnesota. In what form?

Mr. CHANDLER. In the form of an investigation relating to bills of lading.

Mr. STEVENS of Minnesota. That is, the substance of the bill of lading?

Mr. CHANDLER. As I understand it, that is the object of the investigation, to find out whether the terms of these bills of lading and the conditions imposed by the classifications are reasonable; and, by the way, the bill of lading appears in, is prescribed by, and is a part of the classification.

Mr. DECKER. Suppose, for instance, there is a steer lost and the man has said it is worth $50. Under the law can the railroad come in and prove that it was only worth $25 or have they got to pay him $50?

Mr. CHANDLER. They only pay the invoice price for any goods lost. A man can not collect more than the invoice price, nor in the event of having declared a value, more than the value declared.

Mr. DECKER. It is not limited on both sides.

Mr. FARRAR. No, sir; it is only limited on the part of the shipper.

Mr. CULLOP. Has the question ever been submitted to the Interstate Commerce Commission as to whether it should be limited in both ways?

Mr. CHANDLER. It is generally understood that the shipper can only recover the market or invoice value depending on the character of his contract. To recover anything more would be in fact the paying of a rebate, which is contrary to law.

Mr. CULLOP. That provided the market value does not exceed the agreed value in the bill of lading?

Mr. CHANDLER. Yes.

Mr. RAYBURN. We all understand about the contract and the 10 per cent increased rate and the limitation of $50. Now, what is your idea about this entire proposition? What do you want?

Mr. CHANDLER. There are two things we would like to have. In the first place, we would like to have the express contract and rates remain just as they are. The second is, we would like to have the limited liability rates now in effect on certain classes of goods retained, which would be wiped out if this bill went through. For instance, take confectionery. The confectioner can ship candy to the Southern territory at a 6-cent valuation, at a 12-cent valuation, or with no valuation declared, and the rates depend upon the valuation he shows in his bill of lading. Now, if you say that the valuation must be wiped out and the common carrier must be liable for the invoice or market value, naturally those lower rates based upon 6 and 12 cents valuation will be wiped out and all candy would have to go at the unlimited rate. It seems to me that is a very important point that has been overlooked. It is a question of classification as well as a question of liability.

Mr. STEVENS of Minnesota. Let us see what would happen. If this bill should pass the railroads would then be compelled to file new schedules, would they not?

Mr. CHANDLER. They would, and naturally if they were carrying candy worth 20 cents a pound at the fourth class rate with the value limited to 6 cents, they would not be willing to retain the fourth-class rate on a higher valuation.

Mr. STEVENS of Minnesota. That would be a matter for the commission.

Mr. CHANDLER. The commission, as I understand it, under this bill would not have much to say about that.

Now, coming to the question of hidden packages, a very large percentage of merchandise shipped by express is in hidden packages. It is absolutely impossible for the shipper, that is, the shipping clerk, who packs these goods and delivers them to the express company, to tell the value of the goods he ships.

The usual process in a large establishment is when an order is received it is entered on a regular form and that form is turned over to a shipper showing the items to be shipped, but with no prices stated, and all he has to do is to get the goods in order and deliver them to the express company. After they have been shipped, those blanks go to the invoice department, are priced and extended, and maybe six, eight, or ten hours later, the man who makes the invoice knows the value of the shipment. Now, for that reason, the shipper can not declare that value at the time of shipment.

Mr. DECKER. How does he get that 6-cent rate that you speak of?

Mr. CHANDLER. The 6-cent valuation referred to relates to freight shipments; he releases all of his candy to 6 cents and carries liability insurance on the outside. A man shipping by express has the option of assuming any extra risk over $50 or 50 cents a pound. He also has the option of insuring with the express company or with an outside insurance company; and frequently, he can insure with an outside insurance company cheaper than with the express company. In other words, he has an open policy and when that invoice is extended he enters the difference between the liability assumed by the express company and the actual value of the goods on his open policy.

Mr. RAYBURN. You think if this bill were enacted into law you would have to pay a higher rate?

Mr. CHANDLER. I think the shippers would have to pay a much higher rate; and if you wiped out the limited liability rates by this bill, every rate in the United States would be advanced 10 per cent. In other words, you would increase automatically by wiping out the released valuation all freight rates in the country 10 per cent because under the present rule that is the legal rate that would apply. Of course, the Interstate Commerce Commission might come in afterwards and reduce the rates, but that would be the effect of this bill.

Now, take stone, for instance. Stone is shipped at a valuation of 20 cents and 40 cents a cubic foot. I understand it is impossible for a man to take building stone out of the ground for that price. In the case of Norcross *v.* The Louisville & Nashville Road it was admitted that the value of the stone shipped by Norcross Bros. was $3 a cubic foot, and yet the commission approved a rate on it and allowed reparation based on 20 cents a cubic foot. Now, if we are going to wipe out all such valuations and not permit a railroad to make a rate based on a low valuation, or to limit its liability, we are going to make the shipper pay for it.

Mr. DECKER. If a carload of stone were lost, the man could not recover more than 20 cents a cubic foot?

Mr. CHANDLER. No, sir.

Mr. DECKER. Do they like that kind of an arrangement?

Mr. CHANDLER. Yes. If you made a rate based on full liability, that was fair to the railroad, it would be so high that the producers would not be able to ship stone.

Mr. DECKER. In other words, they want to take that risk themselves?

Mr. CHANDLER. Yes; or insure on the outside. For instance, a man in Georgia to-day under the present arrangement can ship marble to Vermont or the man in Vermont can ship to Michigan, and that is a common occurrence. They are doing that constantly.

It is evident that the proposed bill is based upon a misconception of the express business and the requirements apart of the shipping community. I have already shown you that it is not possible for a shipping clerk, as a general rule, to tell an express company the value of a shipment when it is tendered for transportation, for the reason that he does not know it, and if the owner of the goods were compelled to hold his shipments until his invoices were made out it would cause serious delay to his shipments and require in large establishments a greater warehouse space, making the cost of doing business considerably more expensive and result in much inconvenience.

The whole question of express company liability has been thoroughly covered in what was probably the most exhaustive inquiry ever undertaken by the Interstate Commerce Commission. In that case the commission not only fixed the rates that should apply, but also the rules that should govern and the liability that the express companies shall assume, and the limitation so fixed applies to live stock as well as to ordinary merchandise. If this bill becomes a law, all of the work of the commission in that case will be undone, for the the express rates are all based upon a limited liability, and the commission has recognized the justice of requiring the shipper to pay an insurance premium if he desires the carrier to assume a greater risk than that upon which the rates are founded. This was found by the commission to be a fair method of constructing rates, and if the fundamental principle upon which these new express rates are made is set aside, then the whole rate system is wrong and must be reviewed, for any system of rates that is not equally fair to the shippers and carriers is contrary to the act to regulate commerce, and will not hold.

This question of limited liability was brought up in the express case by shippers at the hearings before the Interstate Commerce Commission. They did not attack the restricted value surrounding the express rates. What they did attack was the premium charged for the additional risk which they wanted the carriers to assume, and the commission granted their prayer for relief in this respect.

Personally, I am of the opinion that the live-stock freight rates are fundamentally wrong and should be corrected, but this bill does not accomplish that end. You can not ignore the rate question in the consideration of this bill, for the liability assumed and the rates charged by the carriers are so interwoven that when you touch one you must move the other. The proper method of procedure, in my opinion, if I may be permitted to say so, for the live-stock representatives to take would be to attack the reasonableness of the rates charged for values exceeding the amounts which have so often been mentioned at this hearing, and to ask the commission to require the railroads to charge only a reasonable premium on the additional risk assumed and not a premium based upon a percentage of the freight rate, which bears little, if any, relation to the value of the property.

At one time express charges for extra value were based upon the rate of transportation charged; now there is a uniform insurance premium on merchandise of one-tenth of 1 per cent of the value declared over and above the risk which by law the express companies must assume, and no one objects to this basis, which is admittedly fair to the shipper and to the carrier.

This is a matter that comes under the direct authority of the Interstate Commerce Commission and is inextricably mixed with the question of rates; it must be clear that as all freight classifications are based not only on the weight of and space taken up by different commodities, but also upon the risk assumed by the carriers, that any attempt to remove the risk factor would be reflected in other factors of the rate, so the net result would be that shippers of low-grade commodities would have to pay for the risk assumed on the high-grade traffic; that is to say, all rates would be put upon the plane of the higher risk. Now, we do not think that this is what the country wants.

We do not sympathize with the carriers in their efforts unduly to limit their liability under the terms of their bills of lading, and, as I have said before, we have this question before the Interstate Commerce Commission for adjudication; but we do feel that where there is a wide range in the value of a commodity it is not only proper, but also just, that the carrier should not tax the shipper of a low-grade commodity for the benefit of one that deals in high-grade wares.

Let me illustrate this point, if you please: There are two jewelers doing business in the same town. One deals in cheap, gilded trinkets of low value, frequently designated "notions," and the other deals in diamonds. They both ship from New York a package weighing 1 pound to the same destination, say Chicago. The first dealer's package is worth probably $10 or $15; the second is a diamond tiara worth $10,050. Is it proper to make the rate on the value of the shipment of the last or of the first dealer, for risk is one of the principal factors in rate making? Would it be possible to fix a rate that would be fair to both? We think not. Now, as a matter of fact, the rates by express would be made in this way: The rate on a 1-pound package, valued at $50 or less, from New York to Chicago is 22 cents. If valued at more, the extra charge for the extra value of $10,000 is one-tenth of 1 per cent, so the $10,050 package would have to pay $10 extra for the additional risk of $10,000, and the charge would therefore be $10.22. Now, is there any injustice in that arrangement? We think not.

Is the live-stock situation any different? The railroads say you may declare any value you want to, but if the risk is over $50 or $100, as the case may be, we want to be paid for the risk. That is all there is to it; but the live-stock shipper says he wants the low rate and the benefit of an enlarged protection.

As to the practice when the law was a dead letter, that has no bearing on this subject. It is true that carriers paid claims and shippers presented claims that should never have been made; but that is a thing of the past, and it is well that it is so; we are now dealing with the present and with a matter that is specifically covered by the interstate-commerce act and one which is receiving the attention of the Interstate Commerce Commission. We urge that this bill will limit

the power of the commission; that there is no necessity for it, as the commission has the power to prescribe bills of lading of all kinds, and it has demonstrated this when it prescribed an express receipt.

In our opinion, it would be exceedingly unfortunate if the express rates which have just recently been fixed should be thrown into the confusion which existed prior to February 1, 1914.

I should like to say in closing that the last part of paragraph 1 of section 1, beginning with the word "provided," is impossible of interpretation from a freight-rate standpoint. This proviso says that if goods are hidden from view and the carrier is not notified of the contents, the shippers may be required to state the value, and the carrier may not be required to assume liability beyond the amount so stated, and then it goes on to say "in which case" the commission may establish rates based upon the value of the property. Mind, it says value—nothing else. Weight, density, dimensions, bulk, character of package, etc., are not mentioned; so that a ton shipment of silk, valued at $6,000, would of necessity take the same rate as a $6,000 automobile that required a separate car of special end-door construction, and would weigh two or three times as much as the silk. But this particular wording could not apply to freight shipments, because railroads can not take freight from a shipper on a bill of lading describing the goods as a "box"—it must be a box of something, and the classification tells what rate to apply. It therefore follows that the bill in that respect refers only to express matter. Then what becomes of the quarryman who wishes a low rate and is willing to become a coinsurer with the railroads? Why limit his right to make a contract that will enable him to do business, for under this proviso the commission may only make rates based upon valuation, if the goods are boxed and the nature of the contents not disclosed to the carrier, and the only way a shipper may forward without disclosing the nature of his goods is by express?

Then take the shipper of ore. I can speak from experience in this respect. I have a rate to the smelter based upon a limited liability of $30 per ton, upon which I can ship at a profit; but if I am compelled to pay the unlimited liability rate my ore would remain in the ground, for I could not mine it at a profit. Therefore, if this bill passes, the carrier will not continue to transport my ore for the same price as before, for another shipper is sending ore that is worth $200 per ton to the same smelter. It is neither fair to ask, nor reasonable to expect, that the carrier take the $200 ore, which was paying, and might reasonably be expected to pay, a higher rate than my $30 ore, for the same rate as it charged me on my low-grade ore. On the other hand, would it not be reasonable to expect the carriers to advance my rate to cover the added liability it must assume on the higher-valued shipments? If this assumption is fair and correct, then I must stop mining or do business at a loss.

Mr. Chairman, this bill ignores principles which have been approved by the Interstate Commerce Commission; it ignores conditions which confront shippers every day; it ignores a factor that enters into every freight rate, and it is extremely probable, if enacted into law, that the interests which now so strongly support it will not only find that they have not gained the relief they expected, but will also find that they have imposed unnecessary hardships upon other shippers who do not approve of this legislation.

Mr. STEVENS of Minnesota. Is there any other point you desire to make beyond any extension of the remarks you have already made?

Mr. CHANDLER. Only this point: We believe this matter is fairly before the Interstate Commerce Commission, and we would like to have the matter left in that shape until the commission acts.

STATEMENT OF MR. A. SYKES, PRESIDENT OF THE CORN BELT MEAT PRODUCERS' ASSOCIATION, IDAGROVE, IOWA.

Mr. SYKES. Mr. Chairman and gentlemen of the committee, I wish to say that I come here as the representative of the men who feed live stock in the State of Iowa, the greatest live-stock State in the Union. We not only feed the most live stock, but we feed the best live stock, and I am president of the most effective live-stock organization in the Mississippi Valley. Besides that I am a practical farmer and feeder myself. I followed the plow and fed the cattle all my life until I took up this other line of work, and at the same time I am operating my farm. I have a feeding ranch in Idle County, near Idagrove. Therefore I think I have a right to speak from the standpoint of the practical man in the business, and my remarks shall refer mostly to the proposition in reference to these live-stock contracts that we are now up against. Up until about a year and a half ago we had no difficulty in collecting the value of our animals when they were killed by and through the negligence of the carriers. Our Iowa statute fixes that proposition so far as our intrastate business is concerned.

No common carrier can limit its liability on shipments within the State of Iowa. This rule was applied, generally speaking, on our interstate shipments, which included the bulk of our live-stock shipments, before this 1913 decision of the Supreme Court, and as a result of those conditions we had no difficulty in collecting the value of our animals when they were killed or damaged in transit. Since that decision we have had to take what was written in the contract, which is $50 for a steer, $10 for a hog, $30 for a cow, $100 for a horse, and $10 for a calf, and $3 for a sheep. Now, that is the situation.

Mr. STEVENS of Minnesota. Were the rates the same while you were collecting full value as they have been since?

Mr. SYKES. Identically the same; yes, sir. In 1910 the Interstate Commerce Commission through the work of the Corn Belt Meat Producers' Association readjusted the rates in Iowa and in certain localities they were slightly reduced, making a reduction over the State, perhaps, in the general revenues on the live-stock business of about $100,000 or $150,000 per annum. Aside from that there has been no reduction in the rate, and there was no change prior to the time of the decision, and there has been no change since. There has been no reduction since we have had to take this limited valuation.

Mr. ESCH. Has your association made any application to the Interstate Commerce Commission for a reduction in the rates since this decision?

Mr. SYKES. Not for a reduction of rates, no, sir; none whatever.

I would like for this committee to understand our mode of procedure in Iowa. We go to Omaha, Sioux City, or Kansas City usually and buy our feeders. They cost us there anywhere from $40 to $75 a head and even up as high as $100. We bring those

feeders home and feed them all the way from three to six months. We will feed from 50 to 100 bushels of corn to each steer, according, of course, to the time we feed them. After we have those cattle ready for market we deliver them to the railroads and they are shipped to Chicago. In Chicago they sell all the way from—that is, they have been during the present summer and fall—9 cents up to 11 cents a hundred, which means an average of from $100 to $150 per steer, and some ranging even higher than that. Now, you gentlemen will agree with me that it is an unfair proposition, if they have a wreck on the road and I have part of my cattle killed which are worth $150 on the Chicago market, that I have to go back and settle with the railroad company at the price of $50 per head.

Now, that is just what we are up against and we can not collect any more, except in this way: If we declare that the animal is worth more, then the railroads will increase the rate from 10 per cent to 25 per cent for that declaration and we can ship under that increased valuation and rate. The fact is that the average farmer in Iowa who ships one or two carloads of cattle to the Chicago market each year does not know a thing about those provisions, or his rights in the matter, and the station agent does not call his attention to them. He simply fills out the contract and the farmer comes up to the window and the agent says, "Here, Smith, here is your contract, sign it quick. Here is the train just about ready to go, and you will have to sign this if you want to go along," and he sticks his signature onto the contract. That contract says, "Smith, your steers are worth $50 a head," and that is what he agrees to. In all probability he does not know practically a thing that is contained in the contract and the agent does not say to him, "Do you want to increase the value of these animals and pay a higher rate?" He says nothing about that and the shipper does not know he can increase the liability of the railroad by paying a higher rate. He knows nothing about that until somebody who is better informed than he is tells him that by paying an increased rate of 10 or 25 per cent he can have his values increased.

Mr. ESCH. The decision of the Supreme Court interpreting the Carmack act has been in force about 16 months?

Mr. SYKES. Yes, sir.

Mr. ESCH. That has given you about that much time to get a knowledge of the decision distributed among your shippers. Have any of them availed themselves of that 10 per cent increase?

Mr. SYKES. No, sir; I do not think they have availed themselves of it. To my knowledge I know of only one shipment that has been made under the increased rate. One of the directors of our organization told me that he had made one shipment under the increased-valuation clause and paid the increase of 10 per cent in the rate.

Mr. ESCH. Suppose it became generally known among your shippers, would they avail themselves of it?

Mr. SYKES. No, sir; because they feel that the rate is already high enough and that the railroads prior to this decision paid on the full value of these animals under the rate as it was then and as it is now, and that, therefore, they should be given the same protection under the same rate that they enjoyed prior to this decision.

Mr. CULLOP. Let me ask you a question right there, as a practical shipper. Do you know of any reason why it costs the railroad any

more to haul a carload of cattle, worth $150 each, to market than it does to haul a carload of cattle worth $50 each? Is there any extra work in the transportation of them?

Mr. SYKES. No, sir; none whatever. They move in the same train.

Mr. CULLOP. And by the same crew?

Mr. SYKES. Yes.

Mr. CULLOP. And at the same speed?

Mr. SYKES. Yes, sir.

Mr. CULLOP. And over the same tracks?

Mr. SYKES. Over the same rails.

Mr. STEVENS of Minnesota. Does it cost the railroad any more to transport a car of commodity freight worth $1 a ton than a car of silk worth $10,000 a ton?

Mr. SYKES. You are now entering into rate matters.

Mr. STEVENS of Minnesota. Of course, the proposition contained in Judge Cullop's question does not cover the situation at all.

Mr. SYKES. I do not know about rate matters, but I do know how cattle move, because I have been in the business for 30 years.

Mr. STEVENS of Minnesota. The proposition is fundamental, and I think you have struck the keynote. Your people paid a certain rate, while the liability was not limited, and they pay the same rate when the liability is limited; and they therefore think that the present rate is too high, and I agree with them.

Mr. SYKES. Yes, sir; that is the situation.

Mr. DECKER. Is it not largely, then, a question of rates? Is not that the gist of this matter?

Mr. SYKES. No, sir; it is a question of liability.

Mr. DECKER. In answer to Mr. Cullop's question he brought out from you the fact that it did not cost any more and was not any more trouble to ship $150 steers to market than to ship $50 steers. Suppose you were hauling $150 steers to market for me, with the understanding that if you did not get them there you were to pay the full value of them, which would you charge the most for hauling, the $50 steers or the $150 steers, under such a contract?

Mr. SYKES. My judgment is that all meat-food animals should move at the same rate.

Mr. DECKER. Answer my question, please.

Mr. SYKES. I am not in the railroad business.

Mr. DECKER. I understand that, but that is a simple business proposition. You could not afford to haul $150 steers to market for anybody and guarantee to get them there or else pay the full price, for the same price that you could haul $50 steers and guarantee to pay for them if they were lost.

Mr. CULLOP. The policy in that proposition is the guaranty. There is no guaranty by the railroad company in hauling freight. They only insure the safe delivery of passengers.

Mr. SIMS. I understood this witness wanted to proceed without interruption.

Mr. SYKES. I just want to say this to the committee: Do not put up any legal questions to me or expert rate questions, because I am a farmer and feeder and know nothing about rate matters. I know how these cattle move, and anything of that kind you want to ask me I think I can answer.

There is one illustration that I would like to give the committee as to the injustice of this present rule. I go to the market and buy a carload of 30 steers. We call them stockers. I can buy them for $30 or $40 a head. Now there is another party, or I might myself, so far as that is concerned, buy another carload of steers on that same market, feeding cattle, that would cost me $100 a head. I can go to Omaha to-day and buy a carload of cattle that will cost me $100 or better a head, and yet we call them feeders. I deliver them to the railroad to be delivered to my ranch. If there is a wreck on the road anywhere between Omaha and my farm I can collect the full value of the $40 steer, or, if he is worth up to $50 a head, I can collect the full value of those 30 steers in that car—or, in other words, $1,500 on that carload; while on the $100 steers I can only collect $50 a head, which would be $900, because 18 of such cattle would make a carload.

Mr. DECKER. Let me ask you a question along that line. Suppose I had 100 $30 steers on my farm somewhere and you were a feeder and came down to buy my $30 steers. Before you made me that price on the steers you would estimate how much it would cost you to get them to Iowa, would you not?

Mr. SYKES. I would figure the freight rate; yes, sir.

Mr. DECKER. Then the man who owns the steers would be the one who was paying the freight, because you would take it out of what you would give me.

Mr. SYKES. That is true in a sense.

Mr. DECKER. In a sense?

Mr. SYKES. Yes, sir.

Mr. DECKER. Then I would say to you, "Great Scott, these are cheap steers, and you are not paying me enough," and you would say to me, "Well, I have to pay just as much freight on those steers as I would on $100 steers," and you would deduct that from me on my $30 steers which I had raised on my farm. Now, is that treating the fellow right who has got the $30 steers? In other words, is it not right that everybody should pay freight according to what he has got to ship?

Mr. SYKES. He would suffer just the same if he had a bunch of $100 steers, because I would do the very same thing.

Mr. DECKER. Oh, no.

Mr. SYKES. I would deduct the cost of delivering those steers to Idagrove, Iowa.

Mr. DECKER. Suppose I had $100 steers and you came down to buy them, if you treated me right you would pay me more in proportion for those steers than the $30 steers, because you would not have to pay as much freight in proportion to the value, unless you skinned me.

Mr. SYKES. No, sir; I do not look at it in that way.

Mr. STEVENS of Minnesota. There are two matters I would like to have placed in the record. What is the rate on live cattle from Kansas City and Omaha to Chicago?

Mr. SYKES. Twenty-three and a half cents.

Mr. STEVENS of Minnesota. What is the range of weights?

Mr. SYKES. The weights would range all the way from 400 pounds on calves up to 1,800 pounds on fancy, finished, fat steers.

Mr. STEVENS of Minnesota. Then 10 per cent on 23½ cents would be 2.35 cents. On an average the weight would be how much—1,200 pounds?

Mr. SYKES. Yes; possibly 1,200 pounds would strike the average.

Mr. STEVENS of Minnesota. That would be about 25 or 30 cents insurance for each animal.

Mr. SYKES. Yes, sir; on each one under the present rule.

Mr. STEVENS of Minnesota. I simply want to find out what it costs on each animal for insurance under the present arrangement, and I will be glad if you gentlemen will put that in the record in the right kind of way.

Mr. COWAN. I will file that with Mr. Farrar's testimony with regard to what the insurance company does.

Mr. STEVENS of Minnesota. I would like to have all those facts—what the insurance would amount to under the schedules as filed and what you claim in the controversy before the Interstate Commerce Commission, what the insurance companies will charge now, and what you think would be the additional risk to the railroad company if your contention was allowed. If all those things are shown it will be very helpful to the committee.

Mr. COWAN. I have filed that statement with Mr. Farrar's testimony taken before the Interstate Commerce Commission.

(The committee thereupon adjourned until Friday, Sept. 25, 1914, at 10 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, September 25, 1914.

The subcommittee met at 10 o'clock a. m., Hon. William C. Adamson (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Mr. COWAN. Mr. Chairman, Mr. Sykes had not quite finished his statement yesterday.

The CHAIRMAN. How much additional time will you want, Mr. Sykes?

Mr. SYKES. I think 10 minutes at the outside.

ADDITIONAL STATEMENT OF MR. A. SYKES, PRESIDENT OF THE CORN BELT MEAT PRODUCERS' ASSOCIATION OF IOWA.

Mr. SYKES. At the adjournment yesterday I was giving the committee some illustrations, or was endeavoring to, in regard to the unfairness of the present system as it is applied to shipments of live stock; that is, the present valuations as applied to live stock. I want to carry that just a little further and show how unfair this is and how, as I said, discriminatory it is, for this reason, that the man who raises a cheap class of cattle the railroads pay him in full for if they are destroyed in transit, while the man who breeds and feeds the good cattle, they only pay from 35 to 40 or possibly 50 per cent on these cattle if they destroy them in transit. That happens in this way: The man who raises the cheap cattle, they pay him up to $50

for those cattle if they are worth it. In other words, they will pay him full value.

To make this question plain, he might have in the train a carload of 30 head of cattle worth up to $50 a head, and if those cattle were destroyed in course of transit he could collect up to $50 a head for those cattle, or the full value of them. If an Iowa feeder, which often occurs, is on the same train with his $150 cattle from the Iowa feed yards and his car of cattle is destroyed on account of a wreck or something that is unavoidable on the part of the shipper, they pay him not to exceed 40 per cent for his cattle; in other words, they will only pay him $50 a head for his cattle, which are worth anywhere from $100 to $175. Now, in shipping these best cattle we ship 16 steers in a car, which makes a carload. These 16 steers in Chicago are worth at the present time, and have been for some time past, $150 a head, or $2,400 for such a carload of cattle moving from the Iowa feed yards. The man in the southern part of the United States who raises the cheap cattle, if he is on the same train and has his car of 30 head of cattle, which at the extreme would not be worth over $50 a head, if his 30 head of cattle are destroyed they pay him $1,500 for his carload of cattle, whereas they pay the Iowa man only $800 for his 16 head of cattle, which are worth $2,400; or, in other words, they pay the southern man 100 per cent on his cattle and they pay the Iowa man 33⅓ per cent on his cattle which are destroyed. The same will apply to hogs, the same will apply to horses, and the same example will apply to all classes of live stock. Now, that is where I say there is a rank discrimination, if nothing else, between the shippers of the cheaper class of cattle and the shippers of the good cattle.

Further, it affects Iowa renters, and I want to tell you why. Iowa is getting to be a State that is occupied largely by renters. These renters rent the land at high prices and pay cash for it, $6, $7, or $8 an acre. The payments come due usually in the winter, in February or along there, with a small payment in the fall. They go to the market and buy a carload of steers. They raise a carload of hogs during the summer and they go to market and buy a carload of steers and feed their crops to this live stock in order to pay their rent. And when the steers are ready for market they ship both the steers and hogs to the Chicago market. Now, if they happen to have a wreck on the road or some accident occurs and a large portion of the animals are destroyed by the railroad—and I have in my own mind instances where such cases have happened—the railroad pays them anywhere from 35 to 50 per cent of the value of their animals, which is not the first cost of them when bought at the stockyards. That shipment represented their whole summer's work and the feed from which they expected to pay their rent is gone and they have not any more than enough money left to pay the first cost of the cattle.

Now, it hits the man hard who happens to have his stock in a wreck, and that is the point I want to get before this committee. He is the man who suffers and he is the man who can least afford to suffer. If the loss was scattered over the entire shipments, over the entire number of cars that the railroads carry, it would only amount to 8 or 10 cents a car, but when it falls on an individual, then it amounts to hundreds of dollars, and it hits the man who can least

afford to stand such a loss. Now, so far as the individual going to the commission for relief and redress is concerned, there is no use talking about that. It can not be done. It is too expensive, as has already been shown. There is no man who would attempt to do it owing to the expense that would be attached to it. He would simply lose what he had already lost and take what the railroads saw fit to give him, and let it go at that. That would be the situation. I have in mind now an instance where a renter shipped a carload of hogs to Chicago, and when those hogs arrived there were forty-odd of them dead in the car, and about twenty-odd of the hogs were living. The live hogs were sold at an average net price of about $23 per head, I think, so that his loss lacked a few dollars of amounting to $1,000. The railroad people came back at him and said, we will pay you $10 a head for the dead hogs. What could he do? Nothing but take it, whereas if the hogs had reached the market as they should have done they would have brought him between $23 and $24 per head or a total of about $1,000. He had to stand the balance of the loss. Now, those are examples that are taking place every day in the corn-belt States.

The CHAIRMAN. I promised not to ask you any questions, but I would love to know what killed those hogs in that car.

Mr. SYKES. Well, sir, the supposition is that they were killed through the negligence of the railroad. I did not tell you the history of the case, because it would take 15 or 20 minutes. There was no water to wet the hogs down with. When they were loaded the man did not accompany the hogs and the trainmen said, "We will take care of these hogs and will see that they are properly wetted down." The supposition is the hogs were never watered or wet down at all. That was the evidence produced in the case. So far as the evidence showed in regard to the bedding, the hogs were not wetted down, and they had no care whatever, and when they reached Chicago two-thirds of them were dead.

The CHAIRMAN. They can not live without water, even in transit?

Mr. SYKES. No, sir; they must be wetted down.

Mr. ESCH. Was any action taken against the railroad under the 28-hour law?

Mr. SYKES. They were delivered inside of the proper time limit.

Mr. ESCH. But that law also requires proper feeding and watering of stock in transit, as regards interstate shipments.

Mr. SYKES. Yes; but I do not think that refers to wetting down, Mr. Esch. That only refers to the unloading and watering at convenient points. As I understand the law, I do not think it has any reference to wetting down hogs in hot weather while in transit.

The CHAIRMAN. Mr. Sykes does not seem to want a law that he would have to invoke, but he wants one that is automatic.

Mr. SYKES. That is it. That is what we want.

The CHAIRMAN. In order to get rid of the lawyers and the courts.

Mr. SYKES. Yes, sir; that is the situation.

Just one more point and I am through. We people of Iowa believe that Congress is the proper place to settle this matter. We believe this committee is the proper body to say to the House, "We believe this bill ought to be passed." It was through the activity of our organization and our Iowa people that this bill was introduced in the first place. When this decision was rendered by the

Supreme Court, Mr. Wallec, the secretary of our organization, and myself at once took it up with Senator Cummins, who was then in Des Moines, and went over the matter with him, and he said he would go over the situation, and said, "I believe Congress can remedy those conditions, and I think that is the proper place to get relief." He further said, "I will look the matter up and let you know," and he did; and within a short time we had another little conference with him, and he said, "I have fully made up my mind that Congress can remedy that condition, and it can be remedied by simply passing a bill to prohibit the carriers from limiting their liability," and he said, "If you people say so, I will go to work and prepare a bill and introduce it and have you people back it up when the proper time comes."

That is practically the history of the way this bill came to be introduced in the first place. It is hitting our Iowa people worse than anybody else, or, at least, as bad as any other State. Of course all the corn-belt States are hurt worse than the other States because, as I have already shown, they can collect the full value of their animals killed; that is, the people who raise this cheaper class of live stock, while it is practically impossible for us to do so. We are simply at the mercy of the railroads and have to sign up those contracts in a hurry, if we accompany our live stock. I do not know whether you men know it or not, but these cattle are never billed out—or they are not supposed to be, and it is a rare thing when they are—until after they are loaded onto the cars, and they are not loaded as a rule until the train is there and everything is ready to go, and then the bunch of cattlemen run into the station and the station man has his bills already made out except signing, and he shoves them out the window to Smith, Jones, and so forth, and says, "Here is your bill of lading, sign that; here is your bill of lading, sign that," and they are signed up and they get on the train and away they go. They do not know anything about what the contract contains. They do not know what their privileges are under the contract. As a rule the small shipper is not informed on those questions and knows nothing about his privileges, and does not know that he could get a higher valuation under a higher rate or anything of that kind, and therefore, as a rule, they simply take their loss, whatever it amounts to.

The CHAIRMAN. Would it be too much trouble to write across the bill while he is signing "Subject to revision"?

Mr. SYKES. It would not be any use, as it would do no good.

Mr. STEVENS of Minnesota. What do you claim as to the higher rate, as to its being fair or not, in case you wanted to use the higher rate?

Mr. SYKES. It is absolutely unfair.

Mr. STEVENS of Minnesota. In what way?

Mr. SYKES. It is exorbitant and all out of proportion. It is unjust because it is too high.

Mr. STEVENS of Minnesota. That is, it is too high for the insurance you get?

Mr. SYKES. Too high for the additional insurance. If you ask for 50 per cent increase the rate increase is 10 per cent, and so on. It is absurd to talk of any such increase as that being just. I think the rate is a question for the commission to settle. They should deter-

mine what the proper rate should be. In Iowa, in Illinois, and in other States they did pay full value on these animals under the rate that now exists and which did exist at that time, and if that rate was sufficient, why is it not sufficient now? That is the question. The question I will leave with you gentlemen is that we are entitled to this protection. I do not believe that the railroad should be permitted to limit their liability on this class of shipments.

They have spoken about different values of animals moving at a different rate. Why do they not apply that rule to pianos and automobiles, silk and calico, and all of those things? Automobiles that are worth $500 and automobiles worth $5,000 move at the same rate and in the same car. Pianos worth $100 and pianos worth $1,000 move at the same rate and in the same car, and so on.

The CHAIRMAN. I think you ought to make that speech to the Interstate Commerce Commission.

Mr. SYKES. That is the situation. So far as making a different rate for different values of meat-food animals is concerned, it is perfectly absurd to talk about that. All meat-food animals from a given point to the same destination should move at the same rate.

Mr. ESCH. In the circular which was filed with the committee by Judge Cowan there was a statement that insurance could be gotten at 50 cents a car on live stock. Your idea would be that this 10 per cent additional on the freight charges per car is exorbitant?

Mr. SYKES. Yes, sir.

Mr. ESCH. In view of the fact that insurance can be secured for 50 cents per car?

Mr. SYKES. Yes, sir; that is my idea; and in view of the fact that it has been shown by an expert that it only costs an additional sum of about 10 cents a car to meet these claims on account of such accidents in course of transit.

I thank you, gentlemen, for your courtesy.

Mr. COWAN. Judge Henderson, the commerce counsel for the State of Iowa, is here and desires to make a statement. Then we will be through until our time for conclusion.

STATEMENT OF MR. J. H. HENDERSON, COMMERCE COUNSEL FOR THE STATE OF IOWA.

Mr. HENDERSON. Mr. Chairman and gentlemen of the committee, I am not a traffic man; I am not a farmer, nor a shipper, nor a producer, and I have been in my present position for a comparatively short period of time. I think, however, that I understand and know something about what have been the rules, the decisions, and the results to our shippers. There has been, in view of some of the questions asked yesterday, something that caused me to think that there is not a proper understanding of this bill. So far as a great many of the commodities that are boxed and concealed and by other means so that the value can not be known are concerned, that is taken care of in the bill. There are some other matters discussed with reference to the notice, etc. That is provided for in the bill, and there are but very few commodities that would be affected by the bill materially, as I understand it, which would not be taken care of under the administrative rules as promulgated by the commission.

The particularly large and overwhelming interests in the section of the country from which I come, and from which a large percentage of the live-stock shipments come, are vitally, particularly, and materially interested in this bill and in what is sought to be accomplished by it. In all of the States from which these shipments have largely come, heretofore there have been either constitutional or statutory provisions, or decisions of the court, holding that a limitation of liability is not permissible, and this rule is now applied, as I understand it, in these States to all intrastate shipments. I think it has been said or estimated that 90 per cent of the live-stock shipments from Iowa are interstate shipments, Chicago being the principal market. Now, with reference to any administrative features, of course I do not want to discuss them, nor do I believe that they come within or are affected by the provisions of the bill. The statute in Iowa has been in effect at least since 1873, and it was held in the Solan case, in 1899, by the Supreme Court of the United States that that statute affected interstate as well as intrastate shipments. The same provision is incorporated in the constitution of Nebraska and in statutes of other Western States. From the Solan case down until the announcement of the decision in the Croninger case in January, 1913, so far as the evidence has been taken in the cases pending, and so far as shown by all reports, there have been full and complete settlements made, based on the value of the animals without reference to the declared valuation in the contract, and in the hearings—I think it was last February or March—before the Interstate Commerce Committee of the Senate a representative of the Rock Island Railroad, Mr. Johnson, said that it had been the case in all the adjustments.

Notwithstanding the Carmack amendment and the amendment of 1906, it continued down, following the decision in the Solan case; and following the decision in the Hughes case from Pennsylvania, in the One hundred and ninety-first United States Reports, there has been the payment of the full value. Some time between March and April, in 1913, our people were suddenly confronted with the enforcement of the provision in contracts, according to the decision of the Supreme Court of the United States construing the Carmack amendment, and these shippers, therefore, are not receiving a farthing more than the value named in the contracts. I say that they were suddenly confronted with the enforcement of these rules and contracts. Under the commerce act the carriers were compelled to apply and put into effect the provisions of the tariff regulations, or rules and regulations, which they had adopted and which had been filed with the Interstate Commerce Commission, regardless of their reasonableness or otherwise. Now, confronted, as I say, with this new condition, there began this agitation, and, as stated by Mr. Sykes, at the request of the Iowa Corn Belt Meat Producers' Association, Senator Cummins, from Iowa, prepared this bill. I do not know whether I ought to say it or not, but I would have preferred the bill as it was reported out by the Senate Interstate Commerce Committee to the bill as it was afterwards amended upon the floor of the Senate. The bill is here and those interests of the State which I represent are supporting it.

Now, it is beyond question that all of this transportation is over the same rails, by the same carrier, by the same crews, by the same

engines, and the cost of the transportation is exactly the same. So that, as I have said, in the short space of 30 or 60 days there was a complete revolution so far as our Iowa shippers and all the shippers in the West were concerned. Instead of getting the full value, they received in many instances only 33⅓ per cent of the value. It was the rule at common law, of course, that you could not limit liability on account of negligence, and where contracts have been made that have been enforced, it was because of the doctrine of estoppel, there being no exception nor provision nor authority otherwise to relieve the responsibility except upon the doctrine of estoppel. That was announced in the Pennsylvania case—the Hart case. The ruling there was that a specific representation was made as to value, relied upon, and the court determined it upon the particular facts of the case. You will not be able to find a single decision, in my judgment—I have not been able to find any—where they have held that estoppel could apply except in a case where the valuation was an agreed valuation; where it was not an arbitrary valuation, nor a fictitious valuation, nor a valuation made without reference to the fair actual value of the property. It must be fair and open and understood by the parties. All of these things are essential before the doctrine of estoppel even would apply.

But by reason of the commerce act providing that these tariff regulations when filed, regardless of the question of their reasonableness or otherwise, they are a law to be enforced, and we have to go before the Interstate Commerce Commission and ask for relief from any unreasonable rules and regulations. But underneath and behind it, the law of estoppel is the theory under which there could be any limitations, not as against liability, but limitations as to the amount that is to be recovered in the event the loss is occasioned by the negligence of the carrier.

Now, in view of some suggestions and inquiries made yesterday as to whether or not there ought to be a higher value with a higher rate because of the increased value, because the man with a $150 steer ought to pay more than one with a $100 steer and the one with a $100 steer ought to pay more than one with a $50 steer, I want to say this: While it is true that the value has something to do with the rate, I think—and I believe it will necessarily be agreed to—that the matter before this committee is not a question of rates. The committee does not pretend to undertake to fix any rate whatever, but it is here determining what shall be the law with reference to the limitation of liability for negligence, and for that only. Now, take the instances given by Mr. Sykes, of pianos and automobiles; take the instance of vegetables, for illustration, a carload of cabbage and a carload of cauliflower, worth ten times as much, and the rate is the same. They go along at the same rate, and when you come to put a valuation on these things, the valuation is based on the market of that day and it is based upon the value of the article transported.

When you come to the matter of live stock, under the rule as it is now—and I believe that the principle of the common law is right—where the shipper has nothing to do with these rates and regulations, when he has nothing to do with the provisions of the contract, as in the language of the Interstate Commerce Commission, and of the Supreme Court, it is said that the shipper is placed

at a disadvantage as compared with the carrier, that he must accept those contracts and those provisions that have been provided for him. Now, when you come to talk about valuations and fixing rates——

Mr. STEVENS of Minnesota (interposing). Why do not you address that argument to the Interstate Commerce Commission?

Mr. HENDERSON. We have.

Mr. STEVENS of Minnesota. Then, why have they not given you redress?

Mr. HENDERSON. I want to show you——

Mr. STEVENS of Minnesota (interposing). Well, show us that, and do not go into this dissertation. Instead of doing that, just show us why the Interstate Commerce Commission can not listen to this argument you are making here and give you redress.

Mr. HENDERSON. I do not believe that the law ought to be such that there should be any limitation. We simply go to the Interstate Commerce Commission for the purpose of having them to fix what shall be fair and reasonable rates.

Mr. STEVENS of Minnesota. The Interstate Commerce Commission can remedy the situation you are presenting now?

Mr. HENDERSON. Under the decision of the court holding that there may be a limitation of the liability, I doubt whether they can do that.

Mr. STEVENS of Minnesota. Where is there any limitation upon the power of the commission to do what you want?

Mr. HENDERSON. They have announced in the Release case, in the Thirteenth I. C. C., as proving under certain conditions the release valuation. With the decision of the courts the commission would not overrule and itself announce a different law and construction——

Mr. STEVENS of Minnesota (interposing). It does not make any difference what they have announced. Where is there any statute imposing a limitation upon the power of the Interstate Commerce Commission to grant the relief that you are asking?

Mr. HENDERSON. I could not answer that question more than to say that in my judgment the law ought to be——

Mr. STEVENS of Minnesota (interposing). It makes no difference what the law ought to be—what is the law? Is there any limitation in existing law on the power of the Interstate Commerce Commission to grant you the relief you ask?

Mr. HENDERSON. I should say not.

Mr. STEVENS of Minnesota. Then, why do you not go there?

Mr. HENDERSON. Simply because we want the law to be annouced by Congress as it would seem to be just and right to our people.

Mr. STEVENS of Minnesota. Then, that raises this question: You ask us to act as a court of appeals for the Interstate Commerce Commission and give you redress that they have refused to give and which they have the power to give under the law.

Mr. HENDERSON. No, sir; I do not so understand it.

Mr. STEVENS of Minnesota. That is my understanding of your contention.

Mr. HENDERSON. That may be. I simply want the law announced as it was prior to this decision and to preserve the status quo. Now, there is another thing on this valuation question. You have a valu-

ation per head, and your rates are made upon the basis of so many cents per hundred pounds, and the man, according to the illustration that has been given, had the same rate of cents per hundred pounds. Now, if there are 3 steers killed at a higher value and 10 steers killed at a lower value, the one gets one value and the other does not——

Mr. STEVENS of Minnesota (interposing). That is a small matter. What is your place for if it is not to protect the people of Iowa and go before the Interstate Commerce Commission and get this relief?

Mr. HENDERSON. That is the purpose, sir.

Mr. STEVENS of Minnesota. Then, why do you not do it?

Mr. HENDERSON. I am doing it. I am here at the behest of these people, and I believe that it is right to ask that the statutes of the United States shall say that there shall be no limitation upon the liability of the carrier growing out of the negligence of the carrier and to have that announced as the law of the land. That will enable small shippers, large shippers, and everyone to know just where he has got to go—that is, before his own court and his own tribunal, and recover the value of his property and not have a lengthy process before the Interstate Commerce Commission.

The CHAIRMAN. What is the trouble with it if deliberately and with eyes open, without any fraud or deceit, a bailor and bailee agree that the value of the property of the bailee is so and so? What about that abstract proposition and what is the reason that it is not good, regardless of how the property may be destroyed? The question is can the bailor and the bailee agree as to what the value is?

Mr. HENDERSON. How are you going to have that agreement under the rules and practices we have had, with the individual as against the corporation?

The CHAIRMAN. Then, Mr. Stevens's question is pertinent. Why do you not ask the Interstate Commerce Commission for the relief?

Mr. HENDERSON. Is it not within the province of Congress, if it is right, that Congress shall say there shall be no such limitation? If that is true, why is it not right that a bill of that purpose should come before Congress?

Mr. STEVENS of Minnesota. Congress has authority to prescribe every single individual rate in the United States, but do you want us to do that?

Mr. HENDERSON. No, sir; but we want you to enact a law providing that there shall not be any limitation of the liability of the carrier below the actual value of the actual loss when the loss is due to the negligence of the carrier.

The CHAIRMAN. What is the use of trying to enact a law until you use and enforce those we have already enacted? We have already invested the Interstate Commerce Commission with authority to do this very thing.

Mr. RAYBURN. You have not invested the Interstate Commerce Commission with the power to say that the railroad has no right to limit its liability when the Supreme Court has held otherwise——

Mr. STEVENS of Minnesota (interposing). There is no limitation on that. The Interstate Commerce Commission can do just as it pleases.

The CHAIRMAN. I do not know but what the best thing to do with the Carmack amendment would be to strike from it everything except what it was originally intended to do—that is, to give shippers power to sue the initial carrier. That is what it was intended to do at first.

Mr. COWAN. I would like to answer Mr. Stevens' question, if I may be permitted.

Mr. STEVENS of Minnesota. Certainly; I would like information on that subject.

Mr. COWAN. There is absolutely a clear misunderstanding on the part of the committee as to our position. I do not mean it is a willful misunderstanding, because I am too well acquainted with the gentlemen who compose this committee to suppose such a thing. When the law prohibits a railroad company from limiting its liability it can not file any tariff that limits its liability. The conditions that exist now are that the railroad has filed in its tariff a limit of its liability. You can not sue in the court to recover on account of a discrimination or on account of an unreasonable regulation or practice until the Interstate Commerce Commission has decided that question. That starts in with the Abilene Cotton Oil case, and a review of those cases, and it takes some patience to do it, will bring you to this point: That if the law does not prohibit them from limiting their liability, they can file a limited liability in their tariffs, and they have a right to do that.

Mr. STEVENS of Minnesota. How long would it last if the Interstate Commerce Commission told them to take it out?

Mr. COWAN. A good while.

Mr. STEVENS of Minnesota. It would not last 10 minutes.

Mr. COWAN. They have no right to tell them they can not limit their liability.

Mr. STEVENS of Minnesota. Oh, yes; they have. I beg your pardon.

Mr. COWAN. Absolutely not. I disagree with you on that.

Mr. STEVENS of Minnesota. They can do that if the question is raised in the proper proceeding.

Mr. COWAN. They have a right to regulate the matter and to say what is reasonable or what is discrimination, but the railroads file the limited liability in the tariff, and having filed it they are bound by it. The ordinary shipper who has been in the habit of going into his justice's court to sue can not do it. Why? Because the Supreme Court of the United States holds that in interstate shipments you have got to go before the commission and get the commission's determination first. In other words, you have constituted a jury at Washington that you force everybody to come before instead of allowing a man to go before his jury at home, as he can do in reference to his State business. You had better think about that a little before you conclude that you ought not to prevent a railroad from limiting its liability for its own negligence. Nobody can be hurt by that.

Mr. CULLOP. Let me ask you a question right there. This question is not one of limiting liability, but it is to prevent the railroads from making a certain contract whereby they put in their bills of lading a limit on their liability; and what the courts hold is that the shipper agrees to that. It is a coercive agreement on his part. He has not

anything to do but sign that bill of lading, and nine times out of ten he does not know that that limit is in the bill of lading.

Mr. COWAN. That is correct.

Mr. CULLOP. As I understand it, what you want is legislation to prevent coercive agreements. That is what it amounts to.

The CHAIRMAN. You have already got that.

Mr. CULLOP. No; they have not got that.

The CHAIRMAN. The Interstate Commerce Commission can break up the practice of using that sort of expression in the bill of lading.

Mr. CULLOP. I agree with Mr. Cowan about that.

Mr. COWAN. They have not the power to prohibit a railroad from limiting its liability.

Mr. RAYBURN. I think that is important, and I wish you would express that in detail. If they have not that power, somebody ought to exercise it.

The CHAIRMAN. The power they have is to prevent that sort of bill of lading being signed, and there is no question about that.

Mr. COWAN. Do you think so?

The CHAIRMAN. I know it.

Mr. COWAN. Let me go back to my proposition again and see if I can get you gentlemen to understand it. If you can not do it in a short time, let us take a long time. You can not recover on account of an unreasonable rate, a discrimination, or an unreasonable practice, under a decision of the Supreme Court of the United States, until you shall have obtained the judgment of the commission against that practice. That is what the Supreme Court started out on in the Abilene Cotton Oil case, and they have followed it right on down. If you pass a law prohibiting a railroad from limiting its liability, it can not put that in the tariff, and that is what the Carmack amendment was intended to accomplish. Then it would leave the man so he could go into the justice's court or any other court and recover his damages without having to go before the Interstate Commerce Commission.

Mr. STEVENS of Minnesota. Let me ask you a question. Is there any element in a schedule that is filed by a railroad with the commission, any one of the elements that help to make up a rate schedule, that can not be assailed under the law before that commission? Is there any limitation to any one of the elements that can not be assailed and which the commission can not set aside under existing law?

Mr. COWAN. That is true.

Mr. STEVENS of Minnesota. And they can make an order stating just exactly what ought to be done in the future?

Mr. COWAN. Exactly.

Mr. STEVENS of Minnesota. Then that is all there is to the question.

Mr. COWAN. Now, just be patient a moment and give due consideration to the opinions of others and see whether you are right or not. That is true, but you take John Smith out in Wichita, Kans., who has a claim against the railroad company, he thinks, for $30 or $40, and get him up before the Interstate Commerce Commission to undertake to litigate that claim. That is depriving him of a right that he ought to have and that this committee ought to grant. If you

shall say the railroad shall not limit the liability, that leaves him then to go to his local court and sue, if he wants to, just like we do in Texas.

Mr. DECKER. On the same theory, should he not have a right to go into the justice's court on any other proposition affecting rates?

Mr. COWAN. No, sir; not affecting rates, but affecting liability for the negligence of the railroad company in the destruction of his property.

Mr. DECKER. You assume that the amount of liability does not enter into the element of the rate fixed?

Mr. COWAN. In the most infinitestimal way; but the point about it is that they filed in that tariff a limit of their liability which is not specified according to the rate, and as you have it in Missouri, in your own State——

The CHAIRMAN (interposing). The crux of the proposition is in the bill of lading or contract, and by the amendment of 1910 we gave the commission absolute authority over that.

Mr. COWAN. You gave them authority over that, but I am trying to tell you that no man has a right to go into court to recover for a discrimination or an unreasonable practice unless he is backed up by a decision of the Interstate Commerce Commission.

The CHAIRMAN. That is exactly what I say. You file a petition and ask them to issue an order to all these railroads to cease and desist from putting that clause into the bill of lading, and they will do it.

Mr. CULLOP. But, Mr. Chairman, here is the point about that——

Mr. COWAN (interposing). You are simply depriving the people of the privilege of going into the ordinary courts to recover their damages.

Mr. CULLOP. The railroad companies write into the bill of lading a maximum penalty of $50 a head and the shipper signs that agreement. What they want, as I understand it, and that was the purpose of the Carmack amendment, before that time the railroad companies had a provision in their bill of lading that there was no liability beyond the end of their line. Now, it was the object of the Carmack amendment to make them liable to the destination of the goods because they had issued the bill of lading and the shipper had paid the transportation charges. Now they hand out to the shipper a bill of lading with the price per head in it, and he signs that, and that is an agreement. Now, the Interstate Commerce Commission can not keep them from making that agreement without a statute.

Mr. STEVENS of Minnesota. This is the first time I ever heard that proposition. Just point us to any provision in the statute that compels that situation.

The CHAIRMAN. That is the very thing the commission will do if you ask them to do it.

Mr. CULLOP. This legislation is for the purpose of striking out that arbitrary provision in bills of lading and to let the parties agree about it.

Mr. STEVENS of Minnesota. If you will read section 1 of the existing interstate commerce law you will see that there is absolutely no authority to prevent that.

STATEMENT OF MR. J. C. LINCOLN, TRAFFIC MANAGER MERCHANTS' ASSOCIATION OF NEW YORK.

Mr. LINCOLN. Mr. Chairman and gentlemen of the committee, I am traffic manager of the Merchants' Association of New York, which organization I represent in these proceedings. I am also representing the Philadelphia Chamber of Commerce, at their request, and I am appointed specially by the National Industrial Traffic League to represent that organization, which organization embraces in its membership the leading commercial organizations and shippers located throughout the United States.

The proceedings in connection with the "limitation of liability by common carriers," as heretofore conducted in the other House, and up to the present time in this House, have related particularly to live-stock traffic. I appear before the committee for the purpose of indicating to the committee that there is something else that is affected by the bill besides live stock. The commerce of this country is made up of merchandise, grain, lumber, and other articles which are transported without reference to the question of value or with any limitation of value in the adjustment of claims for loss or damage; the rates upon which traffic are not based upon specific or agreed values. Yet the provisions of this bill, as now drafted, contemplate striking down a contractual arrangement and rate adjustment that now exists upon 95 per cent of the traffic of this country, unless I am in error and unless my associates are in error as to our understanding of the effect of the bill that would be the case.

Under the present regulations of the carriers, two rates are provided upon all shipments tendered for transportation. One "limiting the liability of the carrier" to the terms and conditions of the "uniform" bill of lading, or in the South to the terms and conditions of the "standard" bill of lading in order to secure the benefit of the so-called reduced rates. This undertakes to limit the liability of the carrier not only as to value, where value is a factor in the rate applied, but as well to matters other than value, or matters where value is not considered. The other at the carriers liability limited only as provided by common law and the laws of the United States and the several States in so far as they may apply, which latter rate is not less than 10 per cent higher than the limited liability rate. (See Exhibit A for rules with reference to "limited liability" and "common-law liability.") In the first case the lower rates are applied subject to a limited liability, and in the second case by the payment of the higher rate, under the existing regulations the carriers will assume the common-law liability.

The CHAIRMAN. Is all the balance of the commerce of the country satisfied with that arrangement except the cattle industry?

Mr. LINCOLN. No, sir; I would not say that the balance of the country is entirely satisfied with the arrangement. It has operated——

The CHAIRMAN (interposing). I mean the two rates.

Mr. LINCOLN. It has operated very satisfactorily to the balance of the country, because on 95 per cent of our traffic the question of value is not involved, and the shipper ordinarily avails himself of the lower rate, because he is not going to pay 10 per cent higher rate in order to have the carrier assume the common-law liability.

The CHAIRMAN. Is not the reason for the greater satisfaction on the part of other interests with that arrangement due to the fact that the nature of their shipments is such that they are not as liable to injury as cattle and other live stock?

Mr. LINCOLN. That is true; they are not as liable to injury, and they assume a part of the insurance on that account.

The CHAIRMAN. The shipment of cattle has been so troublesome that it has required separate legislation, and we have several acts on that subject.

Mr. LINCOLN. Now, I wish to bring this point out, and therefore I desire to offer as an exhibit in giving my testimony an extract from the official classification. I do this because I fear the effect of the bill has been misconstrued.

The CHAIRMAN. If you have anything to offer to be filed as a part of your remarks, identify it for the stenographer and hand it to him.

Mr. LINCOLN. I will read only a part of it now, as a means of identification:

> Unless otherwise provided, when property is transported subject to the provisions of the official classification, the acceptance and use are required, respectively, of the "uniform bill of lading," "straight," or "order."
>
> Property shipped under common carriers' liability and not subject to all the terms and conditions of the uniform bill of lading will be carried under the terms set forth in rule 1 of this classification.

Without going into the details, I would say that rule 1 provides for an additional charge of 10 per cent over and above the limited liability rate in order for the shipper to receive the benefit of the carrier assuming the common-law liability. See Exhibit A, as part of my testimony.

The CHAIRMAN. That is 10 per cent of the rate.

Mr. LINCOLN. Yes, sir. Mr. Chairman, I would like to have these papers marked. I think it might be well to allow me to introduce this letter with the exhibits attached so as to have it complete. I will introduce it at the end of my remarks.

The CHAIRMAN. The stenographer will put it anywhere you indicate in your remarks.

Mr. LINCOLN. As I have said, over 95 per cent of shippers' transactions are undoubtedly handled under the limited liability provided for in the uniform bill of lading, or, in other words, the business of practically all the shippers of this country, outside of the live-stock interests, is handled that way. They are shipping under conditions contained in the bills of lading and on a basis of rates that does not provide for a limitation of liability as to value, and they are using the "uniform" and "standard" bills of lading. There is a fear on the part of our shipping public that if by Federal statute, as proposed, the carriers are prohibited from establishing rates based upon any limitation of liability or limitation of the amount of recovery, the present limited liability rates would become void and carriers would apply the rates now subject to their common-law liability, which would result in a material increase in the transportation charges they are now paying.

The CHAIRMAN. It might be a compromise between them.

Mr. LINCOLN. No, sir. The point I am going to make is this: The official classification provides for two rates upon all shipments, and the same is true of the western and southern classifications—first, a

rate based upon the limited liability provided for in the conditions contained in the uniform bill of lading; second, a rate based upon the common-law and statute liability, which rate is 10 per cent higher. Now, the bill as drafted provides that a common carrier may not limit its liability in any respect whatsoever. There are other limitations besides that of value. Now, the question which arises in the minds of the shipping public is this: As the carrier now has two rates, one subject to common-law liability and the other subject to limited liability, would not the enactment of this bill into a statute have the effect of canceling out all the rates based upon limited liability and automatically putting into effect their rates based upon the common-law liability, thereby making the latter the legal rates?

See Exhibit B as part of my testimony.

Mr. F. C. STEVENS. Why should it? You were here yesterday and heard these gentlemen state the conditions in the Central West. They showed what were the conditions that existed there when the common-law liability applied, as it did for many years.

Mr. LINCOLN. On State traffic.

Mr. STEVENS of Minnesota. No, sir; on interstate traffic. Suddenly the Supreme Court rendered this decision, and in the twinkling of an eye the liability was changed from the common law to a limited liability without any change in the rates at all. Now, if it could work that way, why could it not work the other way?

The CHAIRMAN. Your literature reads the other way, anyhow. Your standard rate, as you read it, is the lower rate.

Mr. LINCOLN. You see they add 10 per cent.

The CHAIRMAN. Then you say they add 10 per cent if you do not limit the liability. They have a lower rate the other way. If you had said they reduced it 10 per cent if they limited the liability there would be more logic in your statement.

Mr. LINCOLN. There is in effect from New York to Chicago to-day a rate of 75 cents per hundred pounds, first class, based on a limitation of liability——

The CHAIRMAN (interposing). I am talking about your rates.

Mr. LINCOLN. The limited-liability rate? There is also in effect at the same time a rate of 82½ cents per hundred pounds upon first-class freight subject to what? To the common-law liability. Those two rates stand there to-day as legal rates, as rates legally in effect and on file with the commission, and they are the rates by which the public is governed.

The CHAIRMAN. I am talking about what you read to the committee a few moments ago. You read to the committee a statement that the regular rate was so much, and then you read——

Mr. LINCOLN (interposing). Both are regular rates.

The CHAIRMAN (continuing). And that when the liability was unlimited they add 10 per cent.

Mr. LINCOLN. Rule 1 provides that if one ships property under the common-law liability the rate will be 10 per cent in excess of the other rates. That is a convenient method of stating the rate.

The CHAIRMAN. Then I think you got it wrong. If you state the other rate and then provide an exception to the rate of 10 per cent off for limited liability you would be straight in your argument.

Mr. STEVENS of Minnesota. The point is that when the liability rule was changed on that rate in the Central West it did not change the rate, and we had the same rate for both liabilities. Now, if that was changed in the East, why should there be any objection——

Mr. LINCOLN (interposing). It is all over the country.

Mr. WRIGHT. The same conditions do not apply.

Mr. STEVENS of Minnesota. Why have they actually worked that way?

Mr. LINCOLN. I do not know why, but we do have two rates—one subject to the common-law liability and the other subject to limited liability. We actually having the limited liability rate, would it and could it be automatically substituted for the rate now subject to the common-law liability, because you have said that the carrier can not limit its liability? If you substitute that provision, you affect all existing rates which are used subject to limited liability. That changes the situation entirely.

Mr. STEVENS of Minnesota. Would that kind of a law be constitutional?

Mr. LINCOLN. Do you ask me that in regard to this bill? I think the Interstate Commerce Commission can settle all of these questions and that they have the authority to do so.

The CHAIRMAN. Assuming that the two rates are of equal dignity and importance, if you destroy one of them you dislocate the other, and you would have to arrange a new rate to cover it.

Mr. THORNE. You keep referring to them as two rates.

Mr. LINCOLN. They are two rates.

Mr. THORNE. Did you ever hear of any man shipping first-class commodities between New York and Chicago on the 82½-cent rate that was not covered by the special valuation clause?

Mr. LINCOLN. I do not know why he should. I do not know why anybody would pay the additional charge to buy common-law liability of the carrier. The increased rate is not based on value, but the classification of the article is in large part based upon the value. Now, you take the traffic of the country as a whole and you will find that there are very few commodities upon which the rates are based upon a limitation as to value. In Exhibit C I have undertaken to show a list of commodities upon which rates are made based upon a limitation of liability as to value and for which rates are made according to value and as to which this controversy should be confined. In the western classification territory there are only a few articles out of the total, such as household goods and emigrants' movables, live stock, and paintings, upon which articles the rates are based upon the declared valuation. There is a list of articles here, namely, animal and poultry food, extracts not otherwise indexed by name, fruit jars, jelly glasses, tumblers, clocks and watches, rugs, theatrical properties, chinaware, and porcelain, on which the rates are made based upon the invoice value.

In the official classification there are only eight items upon which ratings are made, based upon values. These are household goods, ore, ostriches, paintings, quartz, silk, watches, and live stock.

Mr. THORNE. How many thousands of items altogether in the classification?

Mr. LINCOLN. I could not tell you. Here is the southern classification. It is composed of a great many pages—357 pages. We are here

in order to protest a readjustment of our rates where the question of values is not involved, in the correction of a rate adjustment, based upon valuation, because we are fearful that the whole rate structure will be jeopardized by the proposed limitation of liability, and it may result in an increase in our rates without giving us any appreciable additional liability on the part of the carriers, because our merchandise moves under the lower rates to-day; that is, rates subject to limitations other than that of valuation.

In connection with my remarks I would like to file a communication of September 2, with Exhibits A, B, and C, which among other matters give in detail the commodities upon which rates are made based upon value, and the form of contract which is now in existence in the different territories and which a shipper must sign in order to get the benefit of the lower rate.

The CHAIRMAN. Identify them and give them to the stenographer.

Mr. LINCOLN. The first is a letter dated September 2, 1914, addressed to the members of the House Committee on Interstate and Foreign Commerce, signed by Mr. O. F. Bell; Exhibit A has already been introduced and it will be made a part of this particular exhibit, and Exhibits B and C.

(Said letter and exhibits follow:)

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Chicago, Ill., September 2, 1914.

To the members of the House Committee on
Interstate and Foreign Commerce:

On June 4, 1914, there was passed by the United States Senate bill (S. 4522) with relation to "limitation of liability by common carriers under bills of lading," and by the House the bill was referred to your committee for consideration.

We believe there is before your committee House bill 10309, and possibly others of the same tenor, having for their purpose the enactment of a Federal act prohibiting carriers from limiting their liability not only as to value but in other respects.

Under the present regulations of the carriers two rates are provided upon all shipments tendered for transportation; one "limiting the liability of the carrier" to the terms and conditions of the uniform bill of lading in order to secure the benefit of the so-called reduced rates, and this undertakes to limit the liability of the carrier not only as to value where value is a factor in the rate applied but as well to matters other than value; the other at the carrier's liability, limited only as provided by common law and by the laws of the United States and the several States in so far as they may apply, which latter rate is not less than 10 per cent higher than the limited liability rate. (See Exhibit A for rules with reference to "limited liability" and "common-law liability.")

As over 95 per cent of shippers' transactions are undoubtedly handled under the "limited liability" provided for in the uniform bill of lading, the rates not being based upon value, there is the fear that if by Federal statute the carriers are prohibited from establishing rates based upon any limitation of liability or limitation of the amount of recovery, the present limited liability rates would become void and carriers would apply the rates now subject to their common-law liability, which would mean a material increase in the transportation charges they are now paying. (See Exhibit B for questions which have arisen in the consideration of the provisions of the Senate bill.)

Taking the traffic of the country as a whole, we find few commodities upon which rates are made based upon a limitation of liability as to value and for which ratings are made according to value. (See Exhibit C.)

Where the question of the "value" of the commodity is not involved in the rate applied, which is generally true under present classifications (see Exhibit C for principal exceptions), there has been no issue as to value between the carriers and shippers by freight. It is feared that carriers taking advantage of such a statute would undertake to require shippers on all freight to indicate

the value of the commodities offered (which would place upon shippers a tremendous and unnecessary burden, and is, in fact, impracticable), and would undertake to establish rates, where there is a widespread difference in value, upon the same commodity for the different values, a situation which does not now exist.

We fear there is a misunderstanding on the part of the legislators as to the present freight-rate structure, or a misconception on the part of the shippers of the proposed law; in consequence the subject matter should be given full consideration and further hearings at which shippers may be heard before any final action is taken.

The Interstate Commerce Commission in formal proceedings conducted a series of hearings with relation to the terms and conditions contained in bills of lading; the taking of testimony, filing of briefs, and presentation of oral arguments have been completed, and the case stands submitted and the order or opinion of the commission is being awaited. The commission has also announced its intention to proceed with an investigation upon the question of charges exacted of shippers under "released" and "nonreleased" rates.

In view of the proceedings above referred to it is our judgment that the proposed legislation amending the Carmack amendment relating to bills of lading should be held in suspense until the commission has completed its investigation and issues its orders, and it can then be determined what legislation may be required.

For the reasons given above, we therefore ask on behalf of the shippers of the country that Senate bill 4522 be not concurred in.

In the Rayburn bill (known as the railroad securities bill), as passed by the House, the Carmack amendment to section 20 of the "Act to regulate commerce," as relating to bills of lading, has been reenacted, but in the consideration of the Rayburn bill by the Senate, and as reported from the Senate Committee on Interstate Commerce, the language of Senate bill 4522 has been substituted for the language used by the House. For the same reasons given above we ask that in the event the language of Senate bill 4522 is incorporated in the securities bill, as passed by the Senate, that such provision be not concurred in by the House.

We further urge that the question of amending the Carmack provision in the "Act to regulate commerce" with relation to bills of lading be made a matter of separate legislation and be made no part of the railroad securities bill.

Respectfully submitted.

O. F. Bell, *Secretary-Treasurer.*

Exhibit A.—*Extract from official classification No. 42.*

Unless otherwise provided when property is transported subject to the provisions of the official classification, the acceptance and use are required, respectively, of the "uniform bill of lading," "straight," or "order."

Property shipped under common carriers' liability, and not subject to all the terms and conditions of the uniform bill of lading, will be carried under the terms set forth in rule 1 of this classification.

Rule 1. (*a*) In order that the consignor may have the option of shipping property either subject to the terms and conditions of the uniform bill of lading hereinafter set forth or under the liability imposed upon common carriers by the common law and the Federal and State statutes applicable thereto, this official classification provides for different rates and for different forms of bills of lading to be used, respectively, as the consignor may elect to have a limited liability or a common carriers liability service.

(*b*) Unless otherwise provided in this classification, property will be carried at the reduced rate specified if shipped subject to all the terms and conditions of the uniform bill of lading. If consignor elects not to accept all the terms and conditions of the uniform bill of lading, he should so notify the agent of the forwarding carrier at the time his property is offered for shipment. If he does not give such notice, it will be understood that he desires his property carried subject to the terms and conditions of the uniform bill of lading in order to secure the reduced rate.

(*c*) Property carried not subject to all the terms and conditions of the uniform bill of lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several States, in so far as they apply, but subject to the terms and conditions of the uniform

bill of lading, in so far as they are not inconsistent with such common carrier's liability, and the rate charged therefore will be 10 per cent higher (subject to a minimum increase of 1 cent per 100 pounds) than the rate charged for property shipped subject to all the terms and conditions of the uniform bill of lading (see note).

(*d*) When the consignor gives notice to the agent of the forwarding carrier that he elects not to accept all the terms and conditions of the uniform bill of lading, but desires a carrier's liability service, at the higher rate charged for that service, the carrier must print, write, or stamp upon the bill of lading a clause reading: "In consideration of the higher rate charged, the property herein described will be carried at the carrier's liability, limited only as provided by law, but subject to the terms and conditions of the uniform bill of lading, in so far as they are not inconsistent with such common carrier's liability."

NOTE.—In computing the rate to be charged upon property shipped not subject to the terms and conditions of the uniform bill of lading, 10 per cent of the reduced rate shall be added thereto (subject to a minimum increase of 1 cent per 100 pounds). If the result includes a fraction of 1 cent it shall be expressed decimally in tenths of 1 cent; for example, if the reduced rate is 21 cents per 100 pounds, the rate to be charged when shipped not subject to the terms and conditions of the uniform bill of lading will be 23.1 cents per 100 pounds; if the reduced rate be 16½ cents per 100 pounds the higher rate will be 18.1 cents per 100 pounds; if the reduced rate is 10 cents per 100 pounds the higher rate will be 11 cents per 100 pounds; if the reduced rate is 4 cents per 100 pounds the increase will be the minimum increase of 1 cent per 100 pounds, and the higher rate to be charged will be 5 cents per 100 pounds.

EXHIBIT B.—*Memorandum with relation to limitation of liability by common carriers in eastern territory (also illustrative of conditions in western and southern territories).*

The official classification provides for two rates upon all shipments by freight:

First. A rate based upon the limited liability provided for in the conditions contained in the uniform bill of lading.

Second A rate based upon the common law and statute liability, which rate is 10 per cent higher

Senate bill S. 4522 provides: "That any common carrier receiving property for transportation shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property; and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier from liability hereby imposed; and any such common carrier so receiving property for transportation shall be liable to the lawful holder of said receipt or bill of lading for the full actual loss, damage, or injury to such property, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to the value in any such receipt or bill of lading; or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void."

Questions.—(1) As the carrier provides for two rates, one subject to the common-law liability and the other subject to a limited liability, would not such a law automatically cancel the limited liability rate?

(2) As the carrier is prohibited from limiting its liability, would the rates now carried subject to its limited liability become automatically subject to the common-law liability?

(3) Would the carrier have the option of applying either method it may elect to comply with the law?

Senate bill S. 4522 also provides immediately after the quotation used the following:

"*Provided, however*, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation dependent upon the value of the property shipped as specifically stated in writing by the carrier. Such rate shall be published as are other rate schedules."

Questions.—(1) As the bill is directed particularly with relation to limitation of value, is the word "character" also synonymous for "kind and value"?

(2) As value of goods can not always be given at time of shipment (particularly is this true as to shipments where the value is determined by the market price at destination), would not the carrier be required in advance to establish rates based upon value, if value is to be a determining factor, in order that the rates may be published?

(3) Where commodities are exposed to view, would not the carrier be prohibited from making different rates upon the same commodity based upon different values?

(4) As in the case of concealed freight, the shipper is required to inform the carrier (other than express) of the kind of goods offered in order that the proper ratings may be applied, and heavy penalties are provided for false classification of property, is not the provision as to character inconsistent with the act to regulate commerce?

EXHIBIT C.—*Commodities upon which rates are based upon value—Official classification.*

Household goods and emigrants' movables: Limited liability rates based upon value not exceeding $10 per 100 pounds.

Ore: Limited liability rates based upon various values per pound.

Ostriches: Limited liability rate based upon value not exceeding $400 per ostrich.

Paintings: Limited liability rate based upon various values per pound. Paintings value exceeding $500 each not taken.

Quartz, gold or silver: Limited liability rate based upon various values per pound.

Silk, artificial or natural: Limited liability rate based upon value not exceeding $1 per pound. (See form of contract.)

Watches: Limited liability rate based upon value not exceeding $1 per watch.

Live stock: Limited liability rates based upon value; set forth in detail in live-stock contracts.

[Form of contract.]

For purpose of enabling the carrier to apply the proper published rate, as explained in its classification and tariffs, I hereby declare that the value of the property herewith described does not exceed _____ per pound (or 100 pounds, or each), and that in case of loss or damage thereto I will not assert claim against the carrier on a higher basis of value than _____ per pound (or 100 pounds, or each) or fraction thereof in weight of the property so lost or destroyed.

Signed_____

[Form of indorsement on bill of lading for silks.]

The consignor of this property has the option of shipping same at a higher rate without limitation as to value in case of loss or damage from causes which would make the carrier liable, but agrees to the specified valuation named in case of loss or damage from causes which would make the carrier liable, because of the lower rate thereby accorded for transportation.

THE WESTERN CLASSIFICATION.

RULE 2, SECTION 1.—Ratings on the following articles in this classification are conditioned upon declared or invoice valuations being given by shippers at time of shipment:

	Page.	Item.		Page.	Item.
Declared valuation:			Invoice valuation:		
Household goods	155	24-25	Animal and poultry foods	73	11
Emigrants' movables	156	1	Extracts, not otherwise indexed by name	127	16
Jeweler's sweepings and tailings	166	11	Fruit jars, jelly glasses, tumblers	148	6-7
Live stock	172	12	Clock watches	275	26
Ore	196	1	Scrap cable, iron or steel	.....	.....
Officers' effects	207	31	Botanical specimens	.....	.....
Paintings, etc	211	13	Rugs	.....	.....
			Theatrical properties	.....	.....
			Chinaware and porcelain	.....	.....

Agents should call shipper's attention to such ratings, and where shippers desire to avail themselves of the lower ratings based on declared or invoice valuation the following declaration must be inserted in bill of lading by agent and signed by the shipper:

SEC. 2. When invoice value is made a condition of the ratings shown in this classification the following clause must be entered in full on the shipping order and bill of lading and signed by the shipper:

"For the purpose of enabling the carrier to apply the lawful rate, as provided in its classification and tariffs, (I–we) hereby declare that the invoice value of the property herein described does not exceed the value as stated, which the carrier, at its option, will be permitted to verify from (my–our) records, and (I–we) will not present this claim for any cause against the carrier on a higher basis than the invoice value."

(Shipper's signature) ——— ———.

SEC. 3. When invoice value is not obtainable the following will govern:

When value declared by shipper is made a condition of the ratings shown in this classification, the following clause must be entered in full on the shipping order and bill of lading and signed by the shipper:

"For the purpose of enabling the carrier to apply the lawful rate as provided in its classification and tariffs, (I–we) hereby declare that the value of the property herein described is the value as stated which is accepted by the carrier as the real and true value, and (I–we) will not present claim for any cause against the carrier on a higher basis of value."

(Shipper's signature) ——— ———.

SOUTHERN CASSIFICATION.

RULE 2. Where the classification provides for a reduced rate, based on a certain fixed valuation, the following special release, containing the agreed valuation, must be written and signed by the shipper or owner upon the face of the bill of lading or shipping receipt:

"The value of the shipment covered by this contract is fixed by the shipper, ———, which is accepted by the carrier as the real and true value thereof, and the rate of freight is charged in accordance therewith, and the carrier assumes liability only to the extent of such valuation and no further."

Southern classification—List of articles based upon value.

Trunks:	
Containing personal effects, not otherwise indexed by name, corded, wrapped, or packed	D1
Containing personal effects, corded, wrapped, or packed, agreed to be of value of $5 or less per 100 pounds (see general rule 2)	1
Bags:	
Traveling, containing merchandise, in boxes	D1
Traveling, containing merchandise, agreed to be of value of $5 or less per 100 pounds, in boxes (see general rule 2)	1
Confectionery:	
Candy, bonbons, maple sugar, popped corn, sweetened or prepared confectionery paste, coatings or liquors, and confectionery, n. o. s., agreed to be of value of more than 6 cents per pound, but not exceeding 12 cents per pound, L. C. L. (see general rule 2)	3
Candy, bonbons, maple sugar, popped corn, sweetened or prepared confectionery paste, coatings or liquors, and confectionery, n. o. s., agreed to be of value of 6 cents or less per pound, L. C. L. (see general rule 2)	4
Candy, bonbons, maple sugar, popped corn, sweetened or prepared confectionery paste, coatings or liquors, and confectionery, n. o. s., agreed to be of value of not more than 12 cents per pound, C. L. (see general rule 2)	5
Candy, bonbons, maple sugar, popped corn, sweetened or prepared confectionery paste, coatings or liquors, and confectionery, n. o. s., packed	1

Cotton regins or linters, in bales compressed or in bales not compressed, with privilege to carrier of compressing, agreed to be of value of 2 cents or less per pound (see general rule 2)---------- 6
Cotton regins or linters, n. o. s---------- Cotton rates.
Household goods and old furniture, subject to the following rules:
Household goods, L. C. L. (see note)—
Loaded in moving-van bodies, each 100 pounds agreed to be of value of $10 or less (see general rule 2) (ship's option)------ 1
Each 100 pounds agreed to be of value of $10 or less (see general rule 2)---------- 2
N. o. s---------- 1½
Household goods, C. L. (see note)—
Loaded in moving-van bodies, each 100 pounds agreed to be of value of $10 or less, and so expressed by shipper in bill of lading (see general rule 2) (ship's option)---------- 6
Each 100 pounds agreed to be of value of $10 or less (see general rule 2), C. L., minimum weight, 20,000 pounds---------- 6
With live stock (valuation as per classification), not exceeding 5 head, in the same car (ship's option), each 100 pounds of household goods agreed to be of value of $10 or less per 100 pounds, C. L., minimum weight, 20,000 pounds (see general rule 2)---------- 5
N. o. s---------- 3
Ores:
Gold, in barrels, agreed to be of value of $20 or less per ton, L. C. L. (see general rule 2)---------- 5
Same, C. L., minimum weight, 30,000 pounds---------- 6
Silver, agreed to be of value of $20 or less per ton, L. C. L. (see general rule 2)---------- 5
Same, C. L., minimum weight, 30,000 pounds---------- 6
Lead, agreed to be of value of $20 or less per ton, packed, L. C. L. (see general rule 2)---------- 5
Same, packed or in bulk, C. L., minimum weight, 30,000 pounds-- 6
† Zinc—
In bags, barrels, or boxes, L. C. L---------- 5
In packages or in bulk, C. L., minimum weight, 50,000 pounds - A△
Tin, agreed to be of value of $20 or less per ton, L. C. L. (see general rule 2)---------- 5
Same, C. L., minimum weight, 30,000 pounds---------- 6
Paintings, pictures, and chromos, in boxes (see general rule 2):
Valuation over $200 per box, taken only by special contract.
Valuation over $50 and not over $200 per box (see general rule 2)--- 3T1
Valuation $50 per box or less (see general rule 2)---------- 1
Peaches, powdered (tobacco flavoring), in cans, packed, or in bulk in barrels, agreed to be of value of 15 cents or less per pound (see general rule 2)---------- 3
Sand:
Monazite—
Agreed to be of value of more than $20 per ton---------- 2
Agreed to be of value of $20 or less per ton, L. C. L. (see general rule 2)---------- 4
Same, C. L---------- 6
Silk, raw, or silk yarn:
Value not specified, in bales, bags, or boxes, taken only by special contract.
Value specified greater than $1 per pound and less than $5 per pound, in bales, bags, or boxes (see general rule 2)---------- 3T1
Agreed to be of value of $1 or less per pound, in bales, bags, or boxes (see general rule 2)---------- 1½
Soap:
In glass or earthenware, packed in barrels or boxes---------- 1
In boxes or barrels, agreed to be of value of 5 cents or less per pound (see general rule 2)---------- 6
Liquid. Same as washing and scouring compounds.
N. o. s., in barrels or boxes (not in glass or earthenware)---------- 3
Whale oil or fish oil. Same as insecticides.

Watches, clock (not jeweled), other than gold or silver or gold and silver plated, agreed to be of value of 60 cents or less each, in boxes (see note) (see general rule 2)---------- 1

Same, agreed to be of value of more than 60 cents each and not exceeding $1 each, in boxes (see note) (see general rule 2)---------- 3T1

N. o. s., not taken.

NOTE.—Boxes must be metal strapped and sealed, and no package weighing less than 50 pounds will be accepted.

I want to present the suggestion to the committee at this time that this is a very grave question. It is more than the question of the limitation of liability by carriers under their bills of lading. We feel that under the interstate-commerce act the commission has entire power to deal with the question, and as an expert body it should be left with them. Last year they proceeded with an investigation of the "conditions contained in the bills of lading." They devoted a number of weeks and several different sessions to hearings upon that question. They now have before them for determination that question—a large number of briefs were filed and the oral arguments have all been completed. We are waiting for an opinion and decision respecting the conditions contained in bills of lading. I wish to say in regard to liability——

The CHAIRMAN (interposing). You look for a result at an early date?

Mr. LINCOLN. We hope to have the result at an early date. I do not desire to take issue with my friend, Judge Cowan, on the live-stock traffic, but I think the commission has entire power to deal with that question. There are ratings to-day upon live stock of higher value than the values as stated in the tariffs and live-stock contracts. In my judgment the ratings based upon the higher values are not reasonable, as they require the shipper to pay too great a rate of insurance for the increase in value.

Mr. STEVENS of Minnesota. Do you think rules should be laid down for live-stock traffic and for all other traffic?

Mr. LINCOLN. They should be laid down for live-stock traffic and all other traffic. In that connection I would like to say that there was a great deal of complaint in the past in regard to the express companies' regulations as to the limit of liability—$50 per 100 pounds—under their old rule, as they charged an excessive insurance rate where the declared value was in excess of $50 per 100 pounds. If a man wanted to make a shipment worth $500 the insurance or extra charge for making the shipment at the declared value of $500 was excessive. The commission, in rendering its decision in the Express-rate case, fixed their rates—and express is different from freight because the contents of the package is not known to the express company—upon a valuation of $50 per 100 pounds; and if a man has a package which he wants to ship that is worth more, and he wants to recover for more, all he does is to pay, in addition to the regular rate, one-tenth of 1 per cent of the value in excess of $50 per 100 pounds in order to get protection for the full amount of his shipment. That is the regulation in effect to-day on shipments by express.

The CHAIRMAN. In general commerce, when a shipper makes a very valuable shipment, is it not the custom for him to insure the goods himself?

Mr. LINCOLN. Every live business man is doing that.

The CHAIRMAN. And that is cheaper than to pay the higher rate?

Mr. LINCOLN. Yes. They are doing that to-day and they did it with the express companies in the old days. They took out their insurance with the insurance companies and made their shipments at $50 valuation.

Mr. DECKER. Why should not the rate be made reasonable so that an ordinary fellow, who ships once in a while, should have the right to get full value without paying an exorbitant rate? Because a man who ships once in a while can not afford to take out insurance.

Mr. LINCOLN. I will say just what I stated in response to Mr. Stevens, that if rates are made based upon different values they should have a reasonable relation one to the other.

Mr. STEVENS of Minnesota. Do you not think that live stock transportation is so different in the conditions which are inherent in it, that different rules and provisions must be laid down for protecting that traffic than would be necessary in your case, where you have skilled men, an abundance of time, and matters like that, to protect your interests; and if the commission can not seem to do it successfully, and a different rule as to live-stock traffic is necessary to be laid down by Congress, what objection have you——

The CHAIRMAN (interposing). Is it not true that insurance companies charge a higher rate on live stock than they do on other shipments?

Mr. STEVENS of Minnesota. Well, I am asking Mr. Lincoln, first, is it not a fact that different rules must exist inherently in the treatment of live-stock traffic than ordinary merchandise?

Mr. LINCOLN. That is absolutely true and it is also true as to some other traffic. For example, I might mention perishable freight traffic.

Mr. STEVENS of Minnesota. Certainly.

Mr. LINCOLN. The commission announced in its consideration of bills of lading that it recognized a difference as to live-stock traffic and perishable freight traffic, and that they would consider those separately from general bills of lading.

Mr. STEVENS of Minnesota. Admitting that, the second question is this: If the commission can not successfully lay down rules that will protect those particular kinds of traffic which require particular rules, have you any objection to a statute being formulated that would accomplish that result if it did not affect your traffic?

Mr. LINCOLN. Absolutely none.

The CHAIRMAN. Is it not already possible, under the law, for the commission to classify and make different regulations?

Mr. LINCOLN. I think the commission has the power to do it and is thoroughly competent to deal with the question under present law, and we should at least wait until they complete their investigation of the question.

The CHAIRMAN. Do not the insurance companies themselves have different rates for different risks? Do not they probably charge more for the insurance of a train load of fine cattle than they would charge for the insurance of a train load of dry goods or some other goods?

Mr. LINCOLN. Well, they have different rates of insurance.

Mr. THORNE. Mr. Lincoln, can you name any insurance company that undertakes this sort of insurance against value liability other than Mr. Farrar, who appeared here yesterday?

Mr. LINCOLN. No, I do not; but I know one thing, that you can get almost any kind of insurance in New York that you want.

Mr. THORNE. Did you ever know anybody to take out such insurance?

Mr. LINCOLN. No, sir.

Mr. STEVENS of Minnesota. If it is an impractical thing that the method of insurance shall apply to live stock then, of course, some plan must be adopted that will be practicable, must it not?

Mr. LINCOLN. Yes, sir. Do you want me to file with you a copy of the present bills of lading?

The CHAIRMAN. You may do so if it materially affects your remarks. Of course, if it is a public document all you need to do is to refer to it.

Mr. CULLOP. In the extension of your remarks I wish you would put in the standard bill of lading, the one in common use.

Mr. LINCOLN. I can put in the uniform bill of lading, the standard bill of lading, and the live-stock contract, if it is desirable, in extending my remarks.

(The documents referred to are inserted as part of Mr. Lincoln's testimony.)

Mr. THORNE. Did you say how many years you have been in this line of work and known of that insurance?

Mr. LINCOLN. You mean, railroad work?

Mr. THORNE. Traffic work.

Mr. LINCOLN. I have been in the railway service since 1876.

Mr. THORNE. And represented St. Louis and New York City?

Mr. LINCOLN. Yes, sir.

The CHAIRMAN. He has been shedding wisdom in this committee for 17 years, I think.

Mr. THORNE. And you are president of the National Industrial Traffic League?

Mr. LINCOLN. I was for four years.

Mr. THORNE. You never heard of anybody taking out an insurance policy against full liability?

Mr. LINCOLN. I know one thing, you can get insurance in New York for almost anything you want. We get insurance for parcels post; we get insurance for express, and we get insurance by water and by rail. You can get almost any kind of insurance you want up to the full liability if you pay for it.

The CHAIRMAN. Can you always find the company after the loss occurs?

Mr. LINCOLN. Oh, yes, indeed.

There is also provided in bill S. 4522 the following language:

Provided, however, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated.

Where the question of the value of the commodity is not involved in the rate applied, which is generally true under present classifica-

tions, and there has been no issue as to value between the carriers and shippers by freight, why should such an issue be created by the passage of such legislation as proposed? As a majority of shipments are hidden from view by wrapping, boxing, or other means the proposed legislation would involve a radical change in the manner of stating rates, as it would mean that practically all rates would be based upon the value as stated by shipper, which at present is not required except as to certain commodities for which classifications provide ratings based upon value.

Under existing tariffs and regulations the shippers are required to state the character of goods offered for transportation in order that proper ratings may be applied, and therefore under existing regulations a carrier can not receive for transportation a commodity unless the character of the commodity is disclosed. Heavy penalties are provided under the act to regulate commerce for the misdescription or misclassification of articles tendered for shipment.

As the bill is directed particularly to the limitation of liability as to value, is the word "character" also synonymous for "kind and value"?

With many goods tendered to the carrier the value thereof can not be determined at the time and place of shipment, as their value is determined by what the goods will bring in the market to which consigned. Particularly is this true of produce, fruits, and goods sold on commission through commission men, brokers, and dealers.

How could a shipper under such conditions respond to the inquiry of the agent of the carrier for the value of the goods?

The tariffs and classification provide for different rates upon different commodities, so that a shipper in tendering freight is compelled to disclose the character of the goods, and it is made a violation of the law to do otherwise; where the character of the goods is made known the shipper is not required to state the value. Is not, therefore, the proposed provision inconsistent with our present law and inconsistent in its terms?

In order to simplify the classifications and to meet the demands upon transportation it has of late been the policy of the different classification committees to get away as far as possible from the proposition of making the classification of freight, based upon a released or an agreed value, for the reason that rates based upon value alone open wide the door to misrepresentation and fraud, condemned by the Supreme Court in its decision.

If the carrier may require the shipper to specifically state in writing the value of the goods, and may establish and maintain rates for transportation dependent upon the value of the property shipped as specifically stated in writing to the carrier, would not the classification of freight have to be materially changed and the carriers be allowed to make their charges based upon value, as well as the character of the goods shipped? If this bill was enacted in its present form it would create a great deal of confusion both with the shippers and the railroads.

The CHAIRMAN. Is there anything further, Mr. Lincoln?

Mr. LINCOLN. No, sir.

The CHAIRMAN. Does any member of the committee desire to ask Mr. Lincoln any questions?

Mr. DECKER. Just another question. Did I understand you to say that 95 per cent of freight is shipped to-day under the limit of liability?

Mr. LINCOLN. I claim that 95 per cent of the commerce of this country moves under a limited liability rate; that is, under a uniform standard basis of rates, which is the limited liability rate. The limitation of liability to which I refer relates, however, to limitations other than that of value. Now, I want you to understand that there is only a very small portion of our total traffic upon which rates are made based on an agreed or released value. There are no valuations made for grain. Grain rates are not made worth so much a bushel; wheat may be worth $1 at one time and at another time worth 50 cents, but the rate remains the same.

Mr. DECKER. In case the grain is lost, how much do they pay?

Mr. LINCOLN. They pay for the value of it.

Mr. DECKER. Full value?

Mr. SYKES. Yes, sir. I know that, because I am a farmer.

Mr. FAULKNER. I think the witness had better not be interrupted by questions from all around the room.

The CHAIRMAN. Well, he seems to take it easy.

Mr. LINCOLN. I do not mind. I will say as to grain that under the uniform bill of lading upon which the grain moves that if there was a value placed upon that grain at the time and place of shipment, settlement is made by the carrier on the basis of that value at the shipping point. That is the limitation of liability, wherein it differs from the common law. If, however, there was no fixed value upon that grain at the time and place of shipment, and no invoice issued, then in a great majority of cases the value would be determined upon the market price at the destination at the time it arrived there or at the time it should have arrived there in case it was lost, and adjustment is made on the basis of the market price at destination or, rather, the common-law basis of settlement.

The CHAIRMAN. Yesterday I showed you a letter from a traffic asociation that desired a hearing. Did you mention that association as one of the associations which you represent?

Mr. LINCOLN. I represent them; yes; I mentioned that association.

The CHAIRMAN. It appears in the record that you represent them?

Mr. LINCOLN. In these proceedings I represent the National Industrial Traffic League.

At this point I might add to my remarks we are inclined to the belief that there is a misunderstanding of the present freight-rate structure, or a misconception on the part of the shippers of the effect of the proposed law; and while admitting there are certain practices which should be corrected, we believe ample authority is now vested with the commission to correct them in a proper proceeding.

The commission now has before it the question of terms and conditions contained in carriers' bills of lading, in which case the taking of testimony, the filing of briefs, and the presentation of oral arguments have been completed, so the case stands as submitted.

A copy of the order for the investigation is herewith submitted in connection with my testimony.

In addition, the commission has announced its intention to make an investigation upon the question of charges exacted of shippers under "released" and "nonreleased" rates.

In view of these proceedings before the commission it is our judgment that the present Carmack amendment relating to bills of lading and limitation of liability should be allowed to stand without change. When the commission has completed its investigation in the pending cases and has issued its orders, it is then time enough to determine what legislation, if any, may be required.

The CHAIRMAN. Is there anyone else here who wants to be heard?

Mr. LINCOLN. No. Unfortunately, after I received notice of the hearing the time was so short that it made it impossible for me to get some western people here who desired to have a hearing.

Mr. THORNE. I should like to have an opportunity to reply to the arguments advanced by the railroads.

The CHAIRMAN. I do not see how you can do it until after they speak. Senator Faulkner, are you ready to proceed?

Mr. FAULKNER. Yes; if nobody wants to be heard.

Mr. COWAN. I would like to have the privilege of asking Mr. Lincoln a question or two.

The CHAIRMAN. Certainly.

Mr. COWAN. Mr. Lincoln, you have been connected with this traffic business a great many years, as I have reason to know, and you have already answered that question. Is it not a fact that the ordinary rate, and the one which is involved in all these controversies, including this 5 per cent advance, is the regular rate of 75 cents a hundred pounds from New York to Chicago, and that 116 per cent of that, or whatever it is, to St. Louis, and the various graded rates—are not these the rates on which the whole traffic of the country is handled, and are they not what we talk about when we talk about rates?

Mr. LINCOLN. Judge Cowan, that is why I appear before this committee. The tariffs on file with the Interstate Commerce Commission are the legal rates of this country. They could be expressed in two ways. The great bulk of the business moves under bills of lading of the carriers, and the rates, tariffs, and classifications would apply subject to those bills of lading.

The CHAIRMAN. If one of them is a certain percentage of the other, is not the latter based on the first one? When one of them states what it is and the other one says it is 10 per cent more than that, is not the second one based on the first one?

Mr. LINCOLN. As I say, that is why I am here, for it is a mere matter of expression. We have two legal rates from New York to Chicago——

The CHAIRMAN (interposing). And one is a certain percentage more than the other.

Mr. LINCOLN. It is expressed as a certain percentage more than the other. I do not know that I know of any tariff—I know there were live-stock tariffs that expressed the two rates in parallel columns, and you could accept one or the other; but we have those two legal rates, and I have come to the committee, and I bring the matter to the attention of the committee because we are afraid that if this bill becomes a law and a carrier can not limit its liability, that then the legal

rate as on file with the commission, subject to a common-law liability, would become the rate that we would have to pay.

Mr. STEVENS of Minnesota. That it would apply automatically.

Mr. LINCOLN. Yes, sir; that is what I fear. If you gentlemen tell us that it would not automatically apply, that the old rate would still continue to apply, subject to a common-law liability, then there would be no occasion for my being here.

The CHAIRMAN. Judge Cowan asked you if that lower rate was not the general standard rate commonly used.

Mr. LINCOLN. It is. As I stated, 95 per cent of our traffic moves on that rate.

The CHAIRMAN. Does it not prove that that other rate is based upon it?

Mr. LINCOLN. It does prove it. But if you cancel our limited-liability rate, what have we left?

The CHAIRMAN. That is another question.

Mr. LINCOLN. We would have no rates left after the passage of the act, would we? Under that theory, I mean.

Mr. DECKER. You would not have that rate, would you?

Mr. LINCOLN. The common-carrier rate?

Mr. DECKER. The common liability.

Mr. LINCOLN. We would not. If the bill went into effect, we would not have the present limited-liability rate.

Mr. RAYBURN. You do not know whether you would or not?

Mr. LINCOLN. I say, if the law went into effect, I do not know what rate we would have. I am fearful of that and fearful of what the result would be by the passage of the bill. I think the matter should be handled by the commission and not by the committee, as you have already delegated——

The CHAIRMAN (interposing). Judge Cowan asked you a question, but you are answering other questions.

Mr. COWAN. I intended to ask another question. I just had two that I wanted to ask him, and I will stop at this one.

The CHAIRMAN. Ask as many as you please.

Mr. COWAN. Do you not know that this 10 per cent proposition is one not commercially used and outrageously higher than the additional risk?

Mr. LINCOLN. I do not know that I answered that question, but I thought I did answer it. As to live stock, I think that the 10 per cent increase is too great an increase for the additional liability that the carrier assumes.

Mr. COWAN. I will have to ask another question. You said that 95 per cent of the traffic was carried on this regular rate. Is it not 99 per cent?

Mr. LINCOLN. I thought I was making a conservative estimate at 95 per cent. Ore and live stock are the principal articles which are transported on a valuation basis.

Mr. COWAN. But the general commerce that you represent through the association of merchants in New York is practically all carried on the regular rate?

Mr. LINCOLN. It is carried on the released rate, the regular released rate.

Mr. COWAN. And then at St. Louis you represent——

Mr. LINCOLN (interposing). The Merchants' Exchange.

Mr. COWAN. And you have been in cases where the subject has been what the rates ought to be, and those cases have all had reference to this regular rate?

Mr. LINCOLN. Yes, sir.

Mr. COWAN. In other words, this 10 per cent advance proposition is simply gotten up in order to relieve the railroads from their liability as it would exist at common law?

Mr. LINCOLN. We have the two rates, and upon the shipper is placed the obligation of selecting the rates he wants—one is subject to the common-law liability and the other subject to the limited liability. In the older days, we tried to enforce the limited liability on all shipments; we had but one rate—one rate subject to the limited liability provided in the carrier's bill of lading—and if a man wanted to get the benefit of the common-law liability rate—the carrier being subject to the common law—he had no rate that he could use. With the establishment of two ratings, as it was the custom to ship under the limited liability rate, that was why it was convenient to express the ratings in that way and why they were published in that way. As 95 per cent of our business had been moving under those rates, it was the convenient method in expressing the rates to say, "We will charge 10 per cent higher," the carrier assuming the common-law liability, than it would have been to state all the rates subject to the common-law liability and make a reduction of 10 per cent for the limited liability.

Mr. DECKER. What percentage of the freight of this country is live stock?

Mr. LINCOLN. Well, speaking of it as tonnage, I would say that the live-stock traffic would represent less than 3 per cent.

Mr. DECKER. Have you any idea about it in money?

Mr. LINCOLN. I could not tell you as to money.

Mr. DECKER. Yesterday Mr. Farrar brought out the point very forcibly that up to the time of rendering these recent decisions—while they, in fact, shipped under the limited liability bill of lading—in practice and effect, owing to the laws of the different States, they were getting the benefit of the common-law liability. Now, then, when the change was made there was no decrease in the rates. In other words, prior to those recent decisions they were getting more for their money than they got after the decisions. Did that condition apply as to this 95 per cent of the freight that you speak about and in which you are interested?

Mr. LINCOLN. There has been no trouble about the 95 per cent.

Mr. DECKER. What I mean is this: Under the laws of the different States when there would be a loss of the goods that you represent here, how did you recover—under the common law or under limited liability? Did not these statutes in the States apply to your goods the same as to live stock? Did you not get the benefit of the laws of those States?

Mr. LINCOLN. As I say, so far as 95 per cent of the traffic is concerned they are not based upon value; that is, you are not making an agreement as to value, but when an adjustment was made it was made on the actual value of the property. Now, in the case of this——

Mr. DECKER (interposing). Then the liability applying to your goods must have been something besides value?

Mr. LINCOLN. Yes.

Mr. DECKER. What did it consist of?

Mr. LINCOLN. Well, there is one condition there and another condition here; the condition as to time for settling claims, the condition for settlement on the basis of invoice value, as modifying the basis of value at point of origin or the point of destination, or the basis of a contract that may have been made three or four months beforehand. The market might have gone down, but the man had to fulfill his contract whether the railroad settled on the basis of the contract value or the actual value.

The CHAIRMAN. There is another question that troubles me. When you 95 per centers insure your freight and there is a loss, do you make the insurance company and the railroad company both pay?

Mr. LINCOLN. No; the contract subrogates the insurance to the railroad upon merchandise.

Mr. STEVENS of Minnesota. We could easily solve your doubts by a provision in the bill that the limited-liability rate should apply unless another rate should be prescribed, as provided by law. That would not affect them continuing the lower rates with the higher liability.

Mr. LINCOLN. Yes, sir.

Mr. STEVENS of Minnesota. Of course, that would be assailed at once by the railroad companies as taking their property without due process of law. Now, would it make any difference if those rates were assailed and if this act were assailed? Would it make any practical difference to your 95 or 99 per cent of the business of the country? Would you know anything about it? Supposing we did pass that act with that provision in it making the lower rates apply, and the railroad companies contested it, would you know or care anything about that litigation?

Mr. LINCOLN. We would not be interested in the litigation if we would continue to pay the same rates that we pay now.

Mr. STEVENS of Minnesota. You would not care or know anything about it?

Mr. LINCOLN. No.

The CHAIRMAN. Would it not be simpler or more easily understood to fix the rate which is to carry the full liability and then make the exception a lower rate if the liability is higher? Would not that be the better arrangement, if you are to have any differentiation at all?

Mr. LINCOLN. You are referring to the way rates are expressed to-day?

The CHAIRMAN. Yes.

Mr. LINCOLN. I would say that it would be preferable to state in actual figures the rate which is universally used rather than to state the rate which a man may occasionally use. The average shipper—and it is human to do so—ships goods subject to the lowest rate that obtains. So, if you must state your rates, and then say that in order to get the benefit of the limited liability rate there will be so much reduction made. You would have to figure it out in any event, unless they were both stated in the tariff.

Mr. FAULKNER. Mr. Lincoln, assume, for example, that if this bill passes and should do away with the lower rate now paid by

the commercial interests of the country by reason of striking out the limited liability upon which that rate is based, and it did not even, by reason of that, cause the higher rate to become a fixed governmental rate, how long would it take the carriers of this country to fix a rate upon which the merchandise of the country could be transported? In other words, to furnish a new rate based upon the destruction of those two rates?

Mr. LINCOLN. I can not answer that question.

Mr. FAULKNER. Would it take a year? You are a traffic man.

Mr. LINCOLN. It would take some time. I would say that in one section of the country the commission rendered an order known as the fourth-section order in the Southeast Rate case, and the carriers have been industriously at work, I know, trying to revise those tariffs to the basis of the decision of the commission. They were to go into effect, I believe, October 15, but the time has now been extended to April 1, so that they can complete their work.

Mr. FAULKNER. That is in one section?

Mr. LINCOLN. The decision of the commission in the fourth-section orders on transcontinental business in the Intermountain case was affirmed by the Supreme Court, and the commission issued orders that those tariffs should go into effect October 1. It has been found necessary to postpone the date in order to give the railroads ample time to get the tariffs ready. It takes a good while to prepare rates involving the entire country or one section of the country.

Mr. FAULKNER. That is all.

Mr. CULLOP. Public policy requires that a railroad company should exercise due care in the transportation of property?

Mr. LINCOLN. It does; yes, sir.

Mr. CULLOP. If the lower rate, as you claim now, is based upon fixing the value, the liability for the amount that is lost as now fixed in the contract as it exists is against public policy, is it not?

Mr. LINCOLN. I do not understand the inquiry.

Mr. CULLOP. If it would increase the cost to make the railroads liable for the full value of the property lost by negligence, then the rate now existing, which limits the amount of the liability, is against public policy in the safe transportation of property, is it not?

Mr. LINCOLN. Theoretically that might be true.

Mr. CULLOP. And obnoxious to good public policy?

Mr. LINCOLN. In practice it is not true.

Mr. CULLOP. Limiting the value to——

Mr. LINCOLN (interposing). To an unreasonably low figure?

Mr. CULLOP. No; the figure now on live stock.

Mr. LINCOLN. I can not speak about the value of live stock.

Mr. CULLOP. If it fixes the value for which they are liable at one-half of the real value and the rate is based upon that, is it not a premium upon negligence?

Mr. LINCOLN. It might be a premium upon negligence.

Mr. CULLOP. Is not that against good public policy?

Mr. LINCOLN. If that were true, and if the value was fixed too low.

Mr. CULLOP. If the value is limited at $50 a head and the steer is worth $150, if you fix it too low, is not that true?

Mr. LINCOLN. That is true if we were fixing the value at $50, but a great many of them are worth $50.

Mr. CULLOP. If you put a premium upon negligence on the part of the railroad company and leave it stand there——

Mr. LINCOLN (interposing). No; I am speaking now as an ex-railroad man in the handling of live stock.

Mr. CULLOP. That is what I wanted to hear you say.

Mr. LINCOLN. There is no premium upon negligence because of those values.

Mr. CULLOP. Then, you mean that the railroad companies are exercising a high degree of care, reasonable with the business they are conducting?

Mr. LINCOLN. On the live-stock business, I think so.

Mr. CULLOP. Then, the rate is not fixed on the value of the property at all; it has nothing to do with entering into the basis of the rate?

Mr. LINCOLN. Yes, sir; it has.

Mr. CULLOP. If the position is true with reference to their exercising proper care now in transportation and they fix a rate on one-half or one-third of the liability of the article that may be lost, then the value of the article has nothing to do in entering into the fixing of the rate?

Mr. LINCOLN. The value of the article has something to do, absolutely.

Mr. CULLOP. You do not believe that you could fix the value of freight rates on the value of the property transported?

Mr. LINCOLN. No; I do not.

Mr. CULLOP. It does not enter into it?

Mr. LINCOLN. The value of the property always enters into the making of rates as an element.

Mr. CULLOP. That is because it belongs to a certain class. In other words, one car-load of coal worth $1.25 a ton does not have a different rate from a carload of coal worth $1 a ton?

Mr. LINCOLN. No; the rate upon the coal is the same, but the rates upon different kinds of coal are different.

Mr. CULLOP. That is the classification?

Mr. LINCOLN. Yes, sir.

Mr. CULLOP. So the rates are based on the classification of the article and not the value of it?

Mr. LINCOLN. But the classification of the article will fix the rate, and the fixing of the classification is in part based upon value.

Mr. CULLOP. It is not a hard and fast rule that applies to actual value, but it is the classification, and there may be different commodities in the same classification?

Mr. LINCOLN. In the making of rates value alone is not the determining factor. You have to consider value, risk, density, volume, and what the traffic will bear. I say that not in an offensive way, but what will that traffic bear in order to move.

Mr. CULLOP. That is, what number of articles should be put into a general class?

Mr. LINCOLN. That is considered in the making of every rate. I made rates for 25 years.

Mr. CULLOP. Not the difference in value of the different commodities?

Mr. LINCOLN. I can not tell you.

Mr. CULLOP. For instance, here is anthracite coal and soft coal, bituminous coal. There are different grades of bituminous coal. They do not make different rates on the different grades?

Mr. LINCOLN. The different grades of bituminous coal?

Mr. CULLOP. Yes, sir.

Mr. LINCOLN. They make different rates upon the different grades of bituminous coal, depending upon the character of the coal.

Mr. CULLOP. Suppose the value fluctuates?

Mr. LINCOLN. There is a range of value which is considered in making that rate. They have a rate on lump coal, they have a rate on mine-run coal, and they have a rate on bituminous slack coal.

Mr. CULLOP. They are of the same class. Let us take wheat. Wheat in my country sold at the thrashing time at 70 cents a bushel. The same wheat brings $1.10 a bushel now; wheat is more valuable than it was then. Has there been a change in the rate?

Mr. LINCOLN. I assume not.

Mr. THORNE. Mr. Lincoln, is it not just to say that there are wide variations in the value of articles taking the same class and same rate?

Mr. LINCOLN. There are very wide variations.

Mr. THORNE. Shoes worth $7 take the same rate as shoes worth $1?

Mr. LINCOLN. The same rate.

Mr. THORNE. There are wider variations in live stock?

Mr. LINCOLN. There are very wide variations, but they take the same rate.

Mr. COWAN. Do you know of any substantial objection to the railroad company being held responsible for its negligence for whatever damage it does to the shipment?

Mr. LINCOLN. No, sir. I believe the railroad company should be held responsible for damage resulting from negligence; not in all cases, because there are exceptions to the rule.

Mr. COWAN. That general rule had been in operation up to the time of the decision of the Supreme Court?

Mr. LINCOLN. I was with the Iron Mountain Missouri Pacific Railroads. In Missouri and Kansas that carrier usually settled its live-stock claims on the basis of actual value.

Mr. CULLOP. I have not read that decision, and I should like to ask a question about it. Does that have anything to do with the negligence of the company?

Mr. FAULKNER. No, sir.

Mr. CULLOP. It has only to do with the contract as to the amount of the liability and has nothing whatever to do with the negligence?

Mr. COWAN. The railroad company would not be liable at all unless negligent as to certain goods, and not in the case of live stock.

Mr. SCOTT. In some jurisdiction.

Mr. COWAN. Not on live-stock shipments under any law we have except by the negligence of the carrier.

Mr. DECKER. I can not understand why this decision has affected the live stock so much more than it has the others?

Mr. COWAN. You ship wheat and they pay every dollar even if it leaks out. They do not do that in the case of live stock, because they have fixed a value in the tariff which they are bound to observe, and

you can not recover unless you get the commission first to decide that it is unreasonable.

Mr. CULLOP. The reason they pay the full value of the wheat is because they have not limited the amount of their liability in their contract to the bill of lading. The reason they do not pay it on cattle is because they have limited the amount to $50 a head.

Mr. COWAN. That is it, exactly.

Mr. CULLOP. That is all there is to this question.

Mr. COWAN. They ought not to be permitted to limit the liability.

The CHAIRMAN. They do not limit the liability on wheat?

Mr. COWAN. No, sir.

Mr. WRIGHT. At the point of origin.

Mr. COWAN. But you have to pay for what wheat you lose or what cotton you lose.

(Thereupon the subcommittee took a recess until 2.30 o'clock p. m.)

Uniform bill of lading—Standard form of straight bill of lading approved by the Interstate Commerce Commission by order No. 787, of June 27, 1908.

[To be printed on white paper.]

——— ——— RAILROAD COMPANY.

Straight bill of lading—Original—Not negotiable.

Shipper's No. ———.
Agent's No. ———.

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading, at ——— ———, 19—, from ——— ———, the property described below, in apparent good order, except as noted (contents and conditions of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road; otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to be the shipper and accepted for himself and his assigns.

The rate of freight from ——— ——— to ——— ——— is in cents per 100 pounds:

[To be printed on white paper.]

If —— times first.	If first class.	If second class.	If rule 25.	If third class.	If rule 26.	If rule 28.	If fourth class.	If fifth class.	If sixth class.	If special per ——.	If special per ——.

(Mail address, not for purposes of delivery.)

Consigned to ——— ———. Destination, ——— ———. State of ———, county of ———. Route, ———. Car initial, ———. Car No. ———.

Number of packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	
					If charges are to be prepaid, write or stamp here, "To be prepaid."
					.....
					Received $——— to apply in prepayment of the charges on the property described hereon.
					..... *Agent or cashier.*
					Per ..... (The signature here acknowledges only the amount prepaid.)
					Charges advanced: $———.

——— ———, shipper, per ——— ———. ——— ———, agent, per ——— ———.

(This bill of lading is to be signed by the shipper and agent of the carrier issuing the same.)

CONDITIONS.

SECTION 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after 48 hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in cases of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law; but

nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route, the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property; or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made, the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonble charge for the detention of any vessel or car, or for the use of tracks after the car has been held 48 hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods without previous full written disclosure to the carrier of their nature shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the povisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Uniform bill of lading—Standard form of order bill of lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

[To be printed on yellow paper.]

——— ——— RAILROAD COMPANY.
Shippers No. ———

(Order bill of lading—Original.)

Agents No. ———

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading, at ——— ——— 19— from ——— the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this original order bill of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The rate of freight from ——— to ——— is in cents per 100 pounds:

If —— times first.	If first class.	If second class.	If rule 25.	If third class.	If rule 26.	If rule 28.	If fourth class.	If fifth class.	If sixth class.	If special per ——.	If special per ——.

(Mail address, not for purposes of delivery.)

Consigned to order of ——— ——— destination ——— State of ——— county of ———. Notify ——— ——— at ——— State of ——— county of ———. Route ———. Car initial ——— car No. ———.

Number of packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	
					If charges are to be prepaid, write or stamp here, "To be prepaid."
					.....
					Received $——— to apply in prepayment of the charges on the property described hereon.
					..... *Agent or cashier.*
					Per .....
					(The signature here acknowledges only the amount prepaid.)
					Charges advanced: $———.

——— ——— shipper, per ——— ———. ——— ——— agent, per ——— ———

(This bill of lading is to be signed by the shipper and agent of the carrier issuing same.)

Indorsements: ——— ———

CONDITIONS.

SECTION 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after 48 hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the prop-

erty, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

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No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and bailing at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held 48 hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after

unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

SEC. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

UNIFORM LIVE-STOCK CONTRACT.

——— STATION, ——— 19—.

This agreement, made this —— day of ———, 19—, by and between the ——— company, hereinafter called the carrier, and ——— (shipper's name), hereinafter called the shipper, witnesseth that the said shipper has delivered to the said carrier live stock of the kind and number and consigned and destined by said shipper as follows:

Consignee, destination, etc.	Number and description of stock (shipper's load and count).	Weight (subject to correction).

Advance charges, $———. Car numbers and initials ——— for transportation from ——— to destination, if on the said carrier's line of railroad, otherwise to the place where said live stock is to be received by the connecting carriers for transportation to or toward destination, and that the same has been received by said carrier for itself and on behalf of connecting carriers for transportation, subject to the official tariffs, classifications, and rules of the said company, and upon the following terms and conditions, which are admitted and accepted by the said shipper as just and reasonable, viz:

That said shipper or the consignee is to pay freight thereon to the said carrier at the rate of —— per ——, which is the lower published tariff rate based upon the express condition that the carrier assumes liability on the said live stock to the extent only of the following agreed valuation, upon which valuation is based the rate charged for the transportation of the said animals and beyond which valuation neither the said carrrier nor any connecting carrier shall be liable in any event, whether the loss or damage occur through the negligence of the said carrier or connecting carriers or their employees or otherwise:

If horses or mules, not exceeding $100 each.

If cattle or cows, not exceeding $75 each.

If fat hogs or fat calves, not exceeding $15 each.

If sheep, lambs, stock hogs, stock calves, or other small animals, not exceeding $5 each.

And in no event shall the carrier's liability exceed $1,200 upon any carload.

That said shipper is to pay all back charges and freight paid by said carrier or connecting carrier upon or for the transportation of said live stock.

That the said shipper is at his own sole risk and expense to load and take care of and to feed and water said stock whilst being transported whether delayed in transit or otherwise and to unload the same, and neither said carrier nor any connecting carrier is to be under any liability or duty with reference thereto except in the actual transportation of the same.

That the said shipper is to inspect the body of the car or cars in which said stock is to be transported and satisfy himself that they are sufficient and safe and in proper order and condition, and said carrier or any connecting carrier shall not be liable on account of any loss of or injury to said stock happening by reason of any alleged insufficiency in or defective condition of the body of said car or cars.

That said shipper shall see that all doors and openings in said car or cars are at all times so closed and fastened as to prevent the escape therefrom of any of the said live stock, and said carrier or any connecting carrier shall not be liable on account of the escape of any of the said stock from said car or cars.

The said carrier or any connecting carrier shall not be liable for or on account of any injury sustained by said live stock occasioned by any or either of the following causes, to wit: Overloading, crowding one upon another, kicking or goring, suffocating, fright, burning of hay or straw or other material used for feeding or bedding, or by fire from any cause whatever, or by heat, cold, or by changes in weather, or for delay caused by stress of weather, by obstruction of track, by riots, strikes or stoppage of labor, or from causes beyond their control.

That in the event of any unusual delay or detention of said live stock, caused by the negligence of the said carrier, or its employees, or its connecting carriers, or their employees, or otherwise, the said shipper agrees to accept as full compensation for all loss or damage sustained thereby the amount actually expended by said shipper, in the purchase of food and water for the said stock, while so detained. That no claim for damages which may accrue to the said shipper under this contract shall be allowed or paid by the said carrier, or sued for in any court by the said shipper, unless a claim for such loss or damage shall be made in writing, verified by the affidavit of the said shipper or his agent, and delivered to the ——— (railroad agent's title), agent of the said carrier, at his office in ——— (agent's address) within five days from the time said stock is removed from said car or cars; and that if any loss or damage occurs upon the line of a connecting carrier, then such carrier shall not be liable unless a claim shall be made in like manner, and delivered in like time, to some proper officer or agent of the carrier on whose line the loss or injury occurs.

That whenever the person or persons accompanying said stock under this contract, to take care of the same, shall leave the caboose and pass over or along the cars or track of said carrier, or of connecting carriers, they shall do so

at their own sole risk of personal injury, from whatever cause, and neither the said carrier, nor its connecting carriers, shall be required to stop or start their trains or caboose at or from the depots or platforms, or to furnish lights for the accommodation or safety of the persons accompanying said stock to take care of the same under this contract.

And it is further agreed by said shipper that in consideration of the premises and of the carriage of a person or persons in charge of said stock upon a freight train of said carrier or its connecting carriers without charge, other than the sum paid or to be paid for the transportation of the live stock in his or their charge, that the said shipper shall and will indemnify and save harmless said carrier, and every connecting carrier, from all claims, liabilities, and demands of every kind, nature, and description, by reason of personal injury sustained by said person or persons so in charge of said stock, whether the same be caused by the negligence of said carrier or any connecting carrier, or any of its or their employees, or otherwise.

And ——— (shipper's name) do— (does or do) hereby acknowledge that—— (he or they) had the option of shipping the above-described live stock at a higher rate of freight according to the official tariffs, classifications, and rules of the said carrier and connecting carriers, and thereby receiving the security of the liability of the said carrier and connecting railroad and transportation companies as common carriers of the said live stock upon their respective roads and lines, but ha— (has or have) voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned.

The ——— ——— COMPANY,
By ——— ———
Station Agent.

Witness my hand ——— ———
Shipper.
By ——— ———
Shipper's Agent.

Witness.

STANDARD 30.

Arrangement of colors and forms in manifolding, on straight shipments: (1) Shipping order, white; (2) bill of lading, white; (3) memorandum, white.

ATLANTA, BIRMINGHAM & ATLANTA RAILROAD, H. M. ATKINSON AND S. F. PARROTT, RECEIVERS.

Straight bill of lading—Original—Not negotiable.

Shippers No. ———
Agents No. ———

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading, at ——— ——— 191—, from ———, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from ——— to ——— is in cents per 100 pounds:

If —— times first class, ———
If first class, ———
If second class, ———
If rule 25, ———
If third class, ———
If rule 26, ———
If rule 28, ———
If fourth class, ———
If fifth class, ———
If sixth class, ———
If class A, ———
If class B, ———
If class C, ———
If class D, ———
If class E, ———
If class H, ———
If class F, per barrel, ———
If special, per ——. ———

(Mail address, not for purposes of delivery.)

Consigned to ——— ———. Destination, ———, State of ———, county of———. Route, ———. Car initial, ———. Car No. ———.

Number of packages.	Description of articles and special marks.	Weight (subject to correction).	Class or rate.	Check column.	
					If charges are to be prepaid, write or stamp here, "To be prepaid."
					.....
					Received $——— to apply in prepayment of the charges on the property described hereon.
					..... *Agent or cashier.*
					Per ..... (The signature here acknowledges only the amount prepaid.)
					Charges advanced: $———.

——— ———, *Agent.*
Per ——— ———.

CONDITIONS.

SECTION 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after 48 hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property or from riots or strikes, or for country damage on cotton. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability

shall be the same as though the property had been carried in closed cars) shall be liable only for negligence.

In case of quarantine the goods may be discharged at the risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's despatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when goods are so discharged, or goods may be returned by carriers at owner's expense and risk to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to goods shall be borne by the owners of the goods or be a lien thereon. The carriers shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required by quarantine regulations or authorities, even though same may have been done by carrier's officers, crew, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and, except as otherwise provided by law, acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right, in case of physical necessity, to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner, and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held 48 hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other

charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariff, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no such carrier or party in possession shall be liable for any loss or damage resulting from fire or for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from vermin, leakage, chafing, breakage, heat, frost, wet, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness, or from collision, stranding, or other accidents of navigation; or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, to transship, to lighter, to load and discharge goods at any time, and assist vessels in distress, and to deviate for the purpose of saving life or property. Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed by the rail carrier, and the liability for such lighterage shall be governed by the other sections of this instrument.

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

INTERSTATE COMMERCE COMMISSION.

No. 4844.

IN THE MATTER OF BILLS OF LADING.

In November, 1904, the commission, acting upon numerous complaints, instituted a proceeding of inquiry into certain proposed changes in the provisions of the bills of lading then in use by carriers in official classification territory, and in June, 1908, it recommended the adoption by all carriers, as a uniform bill of lading, of the form of bill proposed by a joint committee of shippers and carriers appointed by the commission to report upon such a bill. A copy of the proposed form is hereto attached. (Exhibit A.) The form of bill recommended has been generally accepted and used by the carriers in official and western classification territories, but it has not been adopted to any great

extent by the carriers parties to the southern classification. Upon further complaint of shippers, as well as upon its own initiative, the commission entered an order of further investigation on May 6, 1912, a copy of which is attached. (Exhibit B.) In advance of the further hearings in this investigation, dates of which will be announced later, carriers and shippers are requested to forward to the commission, on or before January 15, 1913, the data called for in the attached inquiries.

Washington, D. C., December 16, 1912.

By the commission:

JOHN H. MARBLE, *Secretary.*

EXHIBIT A.

——— Railroad Co.

ORDER BILL OF LADING—ORIGINAL.

Received, subject to classifications and tariffs in effect on the date of issue of this original bill of lading, at ———, 190—, from ———, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this original order bill of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

NOTES.—The foregoing will appear on the front or first page of the bill of lading.

In connection with the name of the party to whom the shipment is consigned the words "Order of" shall prominently appear in print, thus: "Consigned to order of ———."

The bill of lading is to be signed by the shipper and agent of the carrier issuing same, and space shall be provided for this purpose.

The detail arrangement respecting other matters that customarily appear on the face of the bill of lading, such as name of destination, car numbers, routing, description of articles ,weights, etc., will be prescribed by the uniform bill of lading committee.

The size of the bill of lading shall be 8½ inches wide by 11 inches long.

Order bills of lading shall be printed on yellow paper for convenient distinction from bills of lading covering other than "order" consignments.

------ Railroad Company.

BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.

Received subject to classifications and tariffs in effect on the date of issue of this original bill of lading at ____, 190__, from ------, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

NOTE.—The foregoing will appear on the front or first page of the bill of lading.

The bill of lading is to be signed by the shipper and agent of the carrier issuing same, and space shall be provided for this purpose.

The detail arrangement respecting other matters that customarily appear on the face of the bill of lading, such as name of destination, car numbers, routing, description of articles, weights, etc., will be prescribed by the uniform bill of lading committee.

The size of the bill of lading shall be 8½ inches wide by 11 inches long.

Bills of lading covering what may be termed "straight consignments," being those other than "order consignments," shall be printed on white paper.

Bills of lading other than those covering "order consignments" shall be stamped "not negotiable."

The following conditions will appear on the back of the bill of lading:

CONDITIONS.

SECTION 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after 48 hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

SEC. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

SEC. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies of contracts of insurance.

SEC. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 5. Property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held 48 hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

SEC. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

SEC. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters, or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

SEC. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

EXHIBIT B.

At the general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of May, A. D. 1912. Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Myer, Commissioners.

No. 4844.

IN THE MATTER OF BILLS OF LADING.

It appearing, That the commission, on November 21, 1904, entered its order instituting an investigation into the matter of a uniform bill of lading, in which investigation proceedings were duly had, and the commission having duly published its recommendation of a uniform bill of lading on June 27, 1908, in 14 I. C. C., 346;

It further appearing, That complaints have been received by this commission that carriers in certain parts of the country have neglected to adopt this uniform bill of lading, and that certain of the regulations and practices in connection with the use of this form and other forms of bills of lading in use by carriers subject to the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," are unjust, unreasonable, unjustly discriminatory, unduly preferential, and otherwise unlawful;

It is ordered, That an inquiry, to which all carriers subject to the aforementioned act are made respondents, be, and the same is hereby, instituted by this commission on its own motion, for the purpose of determining whether the rules, regulations, and practices in connection with the issuance, transfer, and surrender of bills of lading, the conditions contained thereon, and other practices connected therewith are unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful, and taking such action in connection with bills of lading as may be authorized by law to prevent further violations of the provision of the aforementioned statutes, should any violations be disclosed by said investigation.

It is further ordered, That a copy of this order be served upon each carrier subject to the act to regulate commerce.

By the commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

No. 4844.

IN THE MATTER OF BILLS OF LADING.

(1) Has the form of bill of lading recommended by the commission in its report of June, 1908, for adoption as a uniform bill, been adopted by your line or the carriers serving you?

(2) Has that form been satisfactory to carrier and shipper? If not, why not?

(3) Do conditions on your line, or on the line serving you, warrant or require a different form? If so, wherein do such conditions differ from those on the lines of carriers in western and official classification territories which have adopted the proposed form?

(4) What valid reason is there why the commission should not prescribe the aforementioned proposed form as a uniform bill of lading for all carriers subject to the act to regulate commerce?

(5) What are the requirements on your line as to the use of ink in filling out and signing the bill of lading and as to stamping the name of the issuing office thereon?

(6) What are the means of checking and canceling bills of lading upon final delivery of goods to consignee?

(7) What is the practice of the carrier as to the insertion of weight, rate, and route in the bill of lading?

(8) What are the provisions in your bill for shipments under released valuation?

(9) What is the provision in your bill with respect to "shipper's load and count"?

(10) Upon what data with respect to contents of car, consignee, destination, etc., are bills of lading issued?

(11) What are the requirements as to the surrender of "Order notify" bills of lading before delivery to consignee?

(12) What is the character of any injurious practices in connection with the issuance, use, or surrender of bills of lading, of whatever form? Give specific instances of damage to the shipper resulting therefrom.

(13) To what extent and in what particulars, if any, are any of the provisions of the bill of lading now in use on your line, of whatever form, waived or deviated from in the adjustment of loss or damage claims?

(14) What general or specific suggestions have you to offer upon any phase of the general question of bills of lading?

NOTE.—In making reply, questions need not be repeated, but answers should be numbered to correspond with questions, and name of carrier or interest in whose behalf answer is made should be stated.

AFTER RECESS.

The subcommittee resumed its session.

The CHAIRMAN. You may proceed, Senator.

Mr. FAULKNER. Mr. Wright, will you please proceed?

STATEMENT OF MR. C. C. WRIGHT, GENERAL SOLICITOR CHICAGO & NORTHWESTERN RAILWAY CO., CHICAGO, ILL.

Mr. WRIGHT. Mr. Chairman and gentlemen of the committee, I want to present to this committee, as far as I can, the facts out of which this controversy has grown. It has not been a new one. It has been a matter of considerable negotiation and considerable contest as between the shippers of live stock and the railroad companies for a number of years. Prior to the time when the railroads were regulated by governmental authority and before there was power in the commission to regulate contracts and rates, rules and regulations applicable to the handling of freight, it was found that the carriers, as might be expected, put into their tariffs very many things which were exorbitant, which were unreasonable, and there was no way in which they could be corrected by application to any tribunal. As a result of that in many western States provisions were passed which prohibited the limiting of liability by common carriers, which was perfectly proper and was necessary because prior to the time when railroads were under regulation there was no opportunity for the ordinary shippers to meet with the railroads upon a level in relation to the terms of their contracts. I think that condition has been entirely changed by the power which has been granted to the commission to regulate not only the rates and the service of railroads, but all rules, regulations, classifications, and contracts which the railroads make. The situation is entirely different from what it was prior to the passage of the interstate commerce law and some of the amendments thereto.

Under section 1 of this act to-day the carriers are required to establish and enforce reasonable and just classifications of property, they must make reasonable and just regulations and classifications and tariffs, and they must provide for the issuance and form

of tickets and bills of lading. Everything that a carrier can do in its dealings with the public is required to be published and filed with the Interstate Commerce Commission and is required, under the law, to be a reasonable provision, and further along in the law the commission is given the power to see that it is enforced. So to-day there is submitted by the act creating the Interstate Commerce Commission and the amendments full power in the commission to pass upon every bill of lading (and a live-stock contract is nothing more than a bill of lading adapted to the peculiar conditions of live stock), so that to-day the Interstate Commerce Commission has not only the power, but it is exercising the power, of regulating and passing upon not alone the rates and fares, not alone the regulations in respect to property as to packing and marking, not alone the classification of property, but also every bill of lading, every contract, and every requirement that the carrier makes in relation to the shipment.

I want to call the attention of this committee to what that commission has been doing. There were upon the railroads throughout this section and in various portions of it different bills of lading; different railroads had different bills of lading, and some years ago an attempt was made to secure a uniform bill of lading. That was taken up by the commission with the representatives of the shippers in different sections of the United States, and after a careful, prolonged, hearing an agreement was reached as to the bill of lading in relation to the ordinary property which is transported on a railroad, and it was approved by the Interstate Commerce Commission. That is known as the uniform bill of lading and it is in effect in the official classification territory, that is, east and north of the Ohio River, and in the western classification through from Chicago west. In the South they have agreed upon a bill of lading called the standard bill of lading, which is practically the same. That bill of lading, as Mr. Lincoln indicated this morning, contains a number of limitations of the common law in relation to damages. It is not based upon a separate valuation of the same classes of property, but there are certain limitations in it, some of which Mr. Lincoln referred to, such as changing the rule of damages to be paid, from the value at the time when it should have arrived at the destination to the invoice value; or if no actual invoice of the property, then to the value at the point of origin.

That has been in effect for some three or four years and has been very acceptable, as suggested by Mr. Lincoln, to the public, providing for a rate which is lower than that provided without such limitations. There was some criticism of that. There was some objection made to the commission at that time, and about a year ago the commission docketed a hearing especially upon the forms of bills of lading, as to what those bills of lading should contain, and an extensive hearing, as Mr. Lincoln has stated, was had here continuing day after day, and testimony was taken from the representatives of practically all classes of shippers. I might say that that has been submitted and argued with briefs and arguments, suggestions being made as to the form of it, and it is expected at any day that there will be an opinion providing the form of the bill of lading.

At the time they undertook that investigation the representatives of certain special commodities like perishable fruit and of live stock

contended that the bill of lading in relation to perishable fruit and to live stock ought not to be the same as in relation to the ordinary merchandise. That was conceded. The commission said that they would take those matters up under special investigations—live stock and perishable commodities. That case, as I say, has been submitted.

Since that time they have ordered an investigation, the evidence has not been taken, but it has been docketed and the commission is making an investigation of the subject of these special rates made on value, and released and declared value, and will take up in that the entire subject of the contract, because, mind you, under the decision of the United States courts no provision in a contract is of any force or value unless it is in accordance with the tariffs that are on file; it can not exceed that, so that every provision of a contract must be in the tariffs or classifications which are filed with the commission. In addition to that the live stock interests, represented by a most numerous class, not some poor individual little $30 claimant, have filed a complaint upon this very question of the rates and the hearing was advanced by the commission. It put it down for hearing at as early a date as practicable, the hearing was had, and the commission took testimony for three days, holding night sessions. I have the volume here before me [indicating] which I will leave with the committee and identify before I get through, in which the testimony of the shippers was taken for three days, and the carriers have rested their case before the commission upon the testimony of these shippers without any evidence on their part. It has been briefed by the representatives of the shippers and it has been briefed by the carriers, and those briefs are on file. It has been set for hearing at the November session of the Interstate Commerce Commission.

On top of that, there is now pending before the commission another case involving the entire question of live-stock rates and the conditions of the contracts of live-stock shipments. I will give the I. C. C. number. It is known as the National Society of Record Associations *v.* The Aberdeen & Rockfish Railroad Co. and others. Included in the list of railroads made parties to that is a list covering 49 pages, every railroad in the United States, commencing with the Aberdeen & Rockfish Co. down to the very last one. It is docketed I. C. C. No. 6825. The case has been submitted by these very representatives of the live-stock interests now present. That is I. C. C. No. 6766. There appeared in that case not a poor, simple shipper, but the Iowa State Railroad Commission appeared by its representatives and by its duly appointed attorney, Mr. Henderson, who conducted the examination of a large number of witnesses, and by other representatives; the Corn Belt Meat Producers' Association, which contains a membership of between 3,000 and 5,000, as stated by Mr. Sykes in this record. Mr. Sykes testified at length. The South Dakota Railroad Commission was represented by its attorney and its experts. The American National Live Stock Association was represented by Mr. Cowan, the gentleman here, as well as by its president, Mr. de Ricqles, and by its secretary. That is a concern which Mr. de Ricqles testified ships over 110,000 head of cattle each year. The South Omaha Live Stock Exchange was represented by the same Mr. Stryker, who is before you; there was also represented the Arizona Corporation Commission, having charge of railroad rates in Arizona. The Kansas City Live Stock Exchange was represented, and

testimony was given by this same Mr. Farrar at very much greater length than he gave it here. The Arkansas Valley Stock Feeders' Association, representing feeders of over half a million stock in Southern Colorado, was represented by two witnesses. Those and others were represented at this hearing, and, as I say, the testimony has been taken giving the full facts as presented by the shippers in the case which has been presented to the Interstate Commerce Commission.

Now, in leading up to this complaint, it is true that prior to the decision in the Croninger case there were many times when the value fixed in the contract had not been observed in the settling of claims. That provision was inserted in the contract many years ago, as shown by the testimony which I will leave with the committee—some say 25 years and some say 30 years—but back to the time of the development of the present system of handling live stock, and it went at least back of the time when it was handled upon the 100-pound basis and when it was handled upon the carload basis alone. That was put in at that time, and some said it fairly represented the average value of the live stock. It was put there as the highest value upon which the rating applied, providing for an increase in rate according to value, varying in certain tariffs, from 10 per cent, on account of each 100 per cent increase in value, to 25 per cent.

I want to say to this committee now, as I have stated to the Interstate Commerce Commission and as I have put in writing in briefs to the Interstate Commerce Commission, that I do not believe that any such difference in rates on account of the increased value is justified. I believe that is entirely out of line, but that does not affect the question of whether carriers ought to be allowed to make a rate based upon the difference in value. I agree that any such provision which requires a 25 per cent increase on account of 100 per cent increase in value is nothing more than a club to force a man to sign a lower value. It would have been changed on many of the western roads; in fact, a number of tariffs were prepared, but when this complaint was made before the Interstate Commerce Commission it was decided to wait until the commission determined whether we should be allowed to make any difference, and so it is held in abeyance pending this case, which is to be argued in the early part of November.

Since that time the record shows that the value of live stock has more than doubled. The rates on live stock have not been changed during the same period, except in some few cases they have been slightly advanced and in others there has been a slight reduction.

Prior to the Croninger case the railroads had not been observing all limitations in the settlement of claims, and the State courts had held that it was not a valid provision and so refused to enforce it. They assumed jurisdiction over interstate shipments.

Early in 1908, after this Carmack amendment, the roads commenced to resist that. The first case that was started under that act was the Latta case, which was decided at the same time as the Croninger case, but which did not get up to the Supreme Court as quickly. It arose out of this proposition: A shipper—if Mr. Stephens, of Nebraska, were here he would know him well; he is the

son of a gentleman who was formerly a Member of this body—brought to the railroad company a mare, and he signed a contract and filled in in his own handwriting the value of the mare at $100 and shipped it to Iowa. The mare was destroyed by fire through negligence, it was claimed, of the company. The lower court held that the Carmack amendment under the tariff provided a different rate for animals of that kind and that he was estopped to claim more than $100, because he had made that representation to the railroad company, and having accepted it and taken advantage of the lower rate that he was estopped to claim more. That was reversed by the circuit court of appeals. That was started as early as 1908.

From that time there has been a steady contest in relation to it in certain States in which the Northwestern line operates. In Wisconsin the Wisconsin court decided in the Uhlman case, with which the gentleman from Wisconsin is familiar, that the provision was valid, following the Supreme Court of the United States. They have had practically a similar situation in Minnesota. In Nebraska they have held from the very first that it was invalid under the constitutional provision. In Illinois it has been held good.

When the Croninger case was decided it was determined that we must not violate it; that we must enforce it, because if it was a valid provision, to pay one man more than the declared value would be discriminating in his favor when we enforced it as to others. That led to the action of the live-stock men. They took it up with the railroad companies, and Mr. Cowan, representing these various companies, wrote to the various railroad companies and applied for a conference upon this very subject. I have a copy of his letter here, which I desire to introduce in evidence. This letter is to the representatives of a large number of railroad companies in the West, and addressed to the representatives of the carriers in the West, asking for a conference.

I will not read all of the letters, because it will take too long, but in that letter they invite a conference between the representatives of live-stock associations, of live-stock shippers in the Central Western, Western, and Southwestern States, and the live-stock commission exchanges at the different markets, and the boards of railway commissioners of the Southwestern States, to be held at an early date in Chicago. That conference was held. This letter was presented long after the Croninger case. The letter is dated August 13, 1913. I call attention to that letter on account of the fact that it will illustrate just what is attempted here. In this letter, after stating those who were present, he says that it was suggested at this conference that he had had with these various organizations of live-stock shippers that he should request this conference, and in the letters he says:

> I may say that it is the opinion of the stock raisers and shippers of the country that the valuation or limitation in contracts is too low.

There was no suggestion at that time in any way, form, or manner that the valuation ought to be taken out of these contracts or tariffs at all.

> Furthermore, that the clause in the tariff providing for shipments without limitation of liability are unreasonably higher than the shipments with a limit of liability. It is our opinion that an average of 1 cent or 1½ cents per hundred pounds would more than compensate for the entire loss and damage in live-stock shipments on the principal roads. It is our desire, therefore, to have

an increase in the value named in the contract and to lower the difference in rates between the shipments without such limit of liability and shipments upon the limited liability.

I cite that and call your attention to the fact that long after this question arose, after a conference among these various organizations referred to in the letter, practically the same as represented here, the request that they made of the carriers was upon the basis of simply advancing the value because they said $50 was too low.

The Illinois commission, after agreement and after some discussion with the railroad commission, authorized an increased valuation of steers to $90 and continued the same provision. I am citing that to show that the carriers were requested to meet that situation and that this proposition that they should take out of the tariff any provision which would allow us to fix a different rate on animals of a different value was an afterthought.

I want to say in that connection so that I may not be misunderstood, there was some controversy as to whether this bill prevents our making different rates according to different values. The Senator who fathered this bill said that it did not; that it still allowed us to make different rates on differently valued animals. That, in fact, is all that we do to-day.

I am not defending now the difference in the rate which we make, because I have frankly conceded to you that it is out of all proportion to the difference in service rendered, and that matter is before the commission to say just how much increase there should be. But whatever may be the intent of this bill, it does actually and practically prevent the railroads from making a different rate applicable to steers that are worth $50 apiece and steers worth $150 apiece. Further than that, this bill prevents us from getting one cent more for handling a trotting horse worth $10,000 than we get for handling an ordinary plug horse worth $100. The bill absolutely forbids that in its present shape. Now as to how far we ought to go; as to how much difference we ought to make on account of the value is a thing that I assume this committee will not attempt to decide; in fact, the propriety of this whole question of making this class of rates is a thing that requires a knowledge of the entire situation and a careful consideration of the evidence. The Government has constituted a body which is given authority to determine the terms of our contract and the terms of our classifications, and this provision which they object to is in our classifications. You have western No. 52, there, Mr. Jones, is not that true?

Mr. JONES. Yes, sir.

Mr. WRIGHT. It is in the tariff, and they have full power to strike out all of it or part of it, or change it and say we shall not make any difference on account of value. Now, when Congress has given full power to this body that devotes its entire time and has at its assistance the experts and has examiners to go and investigate every phase of the matter, not only upon the hearings but upon its own initiative, it seems to us, as carriers, that it ought to be left with that power, and that it is poor policy for legislative action to curtail the power of the commission in passing upon that subject. I mention that simply to illustrate that we are meeting the situation before the commission;

that we are not disposed to thrust down the throat of any shipper a contract which is not fair and reasonable; but that we are submitting it to the commission, and that they are acting upon it diligently, presently, and perspectively, and that they ought to have their hands free to continue to act in that way. Their investigations of this subject included the express rates. This bill covers not only the railroad carriers, not only the live stock, which these gentlemen have complained about, but it covers other commodities. It covers the transportation of baggage.

We have to-day a provision in our tariffs that a person, in consideration of the price of his ticket, may check baggage not to exceed $100 in value, and if the value is greater than that they shall declare it at the time of checking the same and pay a certain extra charge. It seems to me to be entirely fair that one who is carrying baggage, like some of the jewelers do, worth several thousand dollars in one trunk, ought to pay more than the ordinary traveler with his ordinary traveling equipment. That provision would be wiped out by this bill. We have another one in reference to dogs, which the Senator said he would be glad to take out. We check dogs on a declared valuation of not to exceed $25, at a certain rate. At common law they have no value, but they have now by various State statutes, and within the last week——

The CHAIRMAN (interposing). I reckon that is a case where the Scripture might be extended to mean, "The price of a dog is an abomination in the sight of the Lord."

Mr. WRIGHT. Yes; and it is to us in the settlement of claims, because this particular dog was checked on that $25 rate, and they now want $150 for him.

The CHAIRMAN. I suppose that is one case where the railroads are on the side of the Lord.

Mr. WRIGHT. That is one, and we think that is true a great many times.

What I have said has been directed specifically to this proposition: We ought not to be called upon to meet this question before a committee which can give it only a few hours' time, when there is already a body actively investigating it and which will be ready soon to pass upon the question, with full power, not to take it en masse and apply it to all commodities, but with full power to make a different provision to fit each class of commodities. Now, it may well be that the commission will find that in the case of household goods we may require a declaration of value and not with live stock. Household goods move in that way. We have a low rate on household goods based upon a release of about $5 a hundred, and if it is more than that the rate is so much higher. I do not remember the exact amount now. Most of our household goods are shipped under that rate, although I have known others to ship under the high rate. But a very different matter is presented when you come to other commodities. For instance, take ore. We have a rate on ore which is assumed to be reasonable for certain classes of ore. Now, there are other ores that can not move on that rate, and because the commodity could not move we have arranged that ores of a certain value, or not to exceed a certain value, shall have a lower rate.

That is only fair and just, and as a result, not of any agreement that they will not claim more of us in any case of loss, but as a result of their representation that it is of that value, it gets the lower rate, and, of course, they could not recover more. I can see no reason why the shipper of live stock, if the amount of difference in the two rates is reasonable, should be any more relieved from the effect of a false statement as to value made for the purpose of securing a lower rate, than any other shipper. I put that upon the condition that opportunity is free and open to him to take a rate which is only reasonably increased on account of value. I am not defending the 25 per cent increase, and will not anywhere.

Mr. CULLOP. It is not an agreement as to value that is in the bill of lading; it is an agreement only to pay so much on account of the loss of it.

Mr. WRIGHT. No; it is an agreement as to value.

Mr. CULLOP. That is what it amounts to. It is not put in with the intention to agree upon a value; that is an indirect matter. How would it suit you if a law were passed making null and void the amount of liability by agreement and just leave it to settlement?

Mr. WRIGHT. Your Carmack amendment does do that.

Mr. CULLOP. No; the Carmack amendment does not do that.

Mr. WRIGHT. Section 20 is in exactly the same form as the State statutes that we have—if anything, a little stronger. The trouble was the Supreme Court held that agreeing upon the value was not fixing limitation in the same way that if I had a lot of furniture which I wanted to take to a warehouse to store and they had a rate of $10 a month on furniture of a certain value and $15 a month if the value were increased, and I take the furniture to them and they say, "What is the value of this furniture," and I say, "So much," and they say, "All right; your rate is so and so." If it were burned up, I could not get any more than the amount I had stated, and that is all this amounts to.

Mr. CULLOP. This is what the section provides:

> That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

Now, that was passed to meet this situation; there was a clause in the bills of lading stating that they were not liable for the negligence of any connecting carrier, and that led up to the Carmack amendment.

Mr. WRIGHT. Yes.

Mr. CULLOP. And it did not attempt to say that they should not contract against liability, and that is the infirmity of the whole thing. If it were not for that, this question would not be here.

Mr. WRIGHT. That was what was argued in that case. I know, because I took part in the argument of it. The Supreme Court held that the law declared by its terms that the carrier should be liable for the loss and damage, and created a right of action; that the right of action was based on this statute, and hence this second provision—

that you should not limit the liability—means that you should not limit the liability fixed by this provision. But they said that an agreement in advance as to the value no more limits the liability than an agreement after it is destroyed limits liability. It is not limiting the liability.

Mr. CULLOP. They are liable for the loss, but they can contract as to what the value is.

Mr. WRIGHT. That is all we ask.

Mr. CULLOP. That is the infirmity of the Carmack amendment, that they did not have a provision in there prohibiting that kind of contract.

Mr. WRIGHT. That did not prohibit an agreement as to value when they brought the freight to us. The Supreme Court said it did not prohibit that, and is there any reason why a man, if he has a fair opportunity and a fair choice of rates, and the commission can insure that he had a fair choice, that he should not have that choice of rate and make this contract?

Mr. CULLOP. But the trouble about this matter grows out of their failure to give the shipper the opportunity. It is printed in the bill of lading, but it is a question of signing that or nothing.

Mr. WRIGHT. No; it is not that.

Mr. CULLOP. The manner in which the business is done is not like the execution of a deed or a written contract about the sale of property. The shipper steps up to the railroad window and it is made out and passed out to him, and the value is already printed in it and he has not a word to say about it.

The CHAIRMAN. If he has no more sense than that he could sign a deed in that way.

Mr. CULLOP. That does not meet this question, because a deed is not signed in that way. There are not two minds coming together about this matter like in a deed or contract. You have not the time when you go to the car window, and the two contracting parties are not altogether on an equal basis.

The CHAIRMAN. When it is handed to him through the window to sign, if he wants to know about it, he had better read it before he signs it.

Mr. WRIGHT. Mr. Sykes testified at this hearing that after the Croninger case they notified all the members of their association about it. I have not one of our western contracts with me, but we will file one, and in that contract the value is left blank, and it is to be filled in with ink. There is printed the value upon which the lower rate is based, but the place for declaring the value is left blank, and it says: "I hereby declare the value of the following animals to be as follows," and it is filled in in writing at the time.

Mr. RAYBURN. But if he fills it in at a value above $50 he gets this higher rate which you say is not justified.

Mr. WRIGHT. Which I say is not justified, and which will be changed by the commission.

Mr. COWAN. Why has not the commission done that?

Mr. WRIGHT. They have never passed on that question yet.

Mr. COWAN. We appealed to the railroad men to do that in Chicago.

Mr. WRIGHT. And I have presented in a brief to the commission a suggestion. We suggest a 5 per cent increase per 100 per cent of in-

crease in value, or a 3 per cent increase for a 50 per cent increase in value. For instance, take the rate on live stock from Omaha to Council Bluffs, which is 23½ cents, or about $11 a car——

Mr. CULLOP (interposing). I agree with you that is fair if two men have the same opportunity in the making of a contract and deliberately make it they ought to be bound by it.

Mr. WRIGHT. That is what I think.

Mr. CULLOP. I agree with you about that. I think the vice in this matter is that they do not have equal opportunity.

Mr. WRIGHT. Let me put it this way——

Mr. CULLOP (interposing). You have had enough experience to know that, and you have been very frank about these matters.

Mr. WRIGHT. I have frankly said that in times past they have not had. I concede that. But when the commission fixes the rate in the case now before them, suppose they fix it and say it shall be 1 cent more a hundred or 2 cents more for the increased value, and it is printed, and everything is open, and it is for him to sign and declare the value. There is not a shipper of live stock but what is in the habit of shipping yearly, and the contracts remain the same, and every man of the three or five thousand numbers, as Mr. Sykes testified here, had been notified about it.

Mr. CULLOP. You are so frank about these matters that I would like to ask you another question.

Mr. WRIGHT. I will answer it frankly, because this is a matter of public interest.

Mr. CULLOP. Has the Interstate Commerce Commission any power to say that any two persons shall not make a contract that is lawful about any given matter? Let me modify that by saying, which is not a violation of any statutory law or which is not against public policy.

Mr. WRIGHT. No; but if they fix the rate (and the carriers can not charge more) and if they fix the terms under which we may handle it, then neither we nor the shipper can make a different contract.

The CHAIRMAN. Mr. Cullop's idea is that they stand them up in a row and have them sign the contracts, and I think the Supreme Court can prohibit the railroads from enforcing such rapid execution.

Mr. WRIGHT. Exactly.

Mr. CULLOP. Do you concede that my position is right about the way the bills of lading are usually agreed upon?

The CHAIRMAN. I have had experience with a number of them in my life and I never saw any justification for a man signing them if he did not want to.

Mr. RAYBURN. But that is not the point. The man has to take a $50 valuation at a low rate or pay an extortionate rate.

The CHAIRMAN. Not if he appeals to the Interstate Commerce Commission.

Mr. CULLOP. If we can regulate it by statute——

The CHAIRMAN (interposing). We have already done that and if they do not avail themselves of the law there is no use giving them any such laws. It is the enforcement of laws that does good and not the piling up of statutes upon statutes which nobody pays any attention to.

Mr. WRIGHT. I want to suggest that the commission are determining whether or not there shall be any increase. Now, it is a matter of public policy as to whether you fix the rate upon the average value of all articles of a class, or whether you will fix it upon the value of the cheaper articles of a certain grade. Now, I think there would be justice, and perhaps public policy would be subserved, by requiring carriers to have a lower rate on Ford automobiles worth $400 or $500 apiece than on Pierce-Arrows worth $5,000 apiece. I presume it would be. We have not carried them, however, in that way, and it is left to the commission to determine that question. Now, it seems to me that would certainly be fair. It is a matter of argument; it is a matter upon which we might differ as to whether it would be best for all concerned to make one rate applicable to all livestock and let the fellow with a poor old shack of a horse pay the same as the fellow with the race horse and average it up and base the rate on that average, or we carry graded rates according to value. Now we might differ upon that proposition.

Mr. CULLOP. Suppose one man comes with a race horse with a value of $1,500 and another comes with a race horse with a value of $5,000, is there a different rate on those horses? Does not the race-horse rate apply?

Mr. WRIGHT. No; it is graded according to value. It is so much additional for each 100 per cent increase in value.

Mr. THORNE. Did you ever know of a $5,000 race horse being shipped by freight?

Mr. WRIGHT. I know of a judgment for $3,000 that they gave for a horse which the Supreme Court reversed.

Mr. THORNE. Do you know of any others?

Mr. WRIGHT. That man testified that he had shipped them many times and had shipped this same horse many times and other race horses of equal value. I do not know myself.

Mr. THORNE. Is it a rare thing or not?

Mr. WRIGHT. It is not so very rare.

Mr. THORNE. Can you mention any other case?

Mr. WRIGHT. Yes; Mr. Carlin, of St. Paul, shipped over the Omaha Railroad a lot of his race horses by freight, from Omaha to St. Paul, and they were burned up and there was a lawsuit.

Mr. THORNE. How much were they worth apiece?

Mr. WRIGHT. I do not know, but Mr. Carlin keeps a pretty high class of race horses.

Mr. THORNE. You have mentioned two shippers out of about two million who have shipped race horses.

Mr. WRIGHT. I do not think two millions have shipped race horses.

Mr. THORNE. Do you know of any other man who has shipped a race horse worth $2,000 or more by freight?

Mr. WRIGHT. I do not know how many, but I know that Mr. Latta was shipping by freight all over the State of Nebraska. I did not see them shipped.

Mr. STEVENS of Minnesota. Before you close your argument I would like to have you address yourself to this situation: Is it expedient from the public standpoint or from the carriers' standpoint to allow the shipper to have three alternatives as to the excess rate; first, fix a basic rate, a minimum rate, then for excess value either allow the

shipper to carry his own insurance or to apply to an outside agency; or, third, to apply to the carrier as the insuring agency?

Mr. WRIGHT. I think so.

Mr. STEVENS of Minnesota. Please discuss that subject from the public standpoint.

Mr. SIMS. I would like to ask a question about that race horse. Was that horse valued at $100 when shipped and $3,000 when the question of liability arose?

Mr. WRIGHT. Yes, sir; he testified to that. It was burned up before it had gone 50 miles and it was said to be our negligence, and when they got the judgment the horse was, I think, valued at $3,000, and I have no doubt he was worth that. He swore to that, and from other investigations we could not prove otherwise.

Mr. SIMS. And the Supreme Court reversed the finding of the lower court?

Mr. WRIGHT. The Supreme Court held that the Carmack amendment had taken jurisdiction of the whole matter. It said we had put in our tariffs this provision that this rate should apply and they took the view that the court could not determine whether that 10 per cent increase was reasonable or not; that it was conclusively presumed to be reasonable until the commission changed it. Now, he testified he signed a contract knowing all about it and put in a valuation of $100, and under that valuation got a cheaper rate and the court held he could not collect more under the decision in the Hart case. They decided it at the same time as the Croninger case and Mr. Scott argued the Miller case which was decided at the same time. Yours was not a race-horse case, Mr. Scott?

Mr. SCOTT. No, sir; a stallion valued at $1,500, and they recovered a judgment for $1,200.

Mr. SIMS. What did the Supreme Court finally decide as to the effect of the limitation?

Mr. WRIGHT. They finally decided that the Carmack amendment took charge of the entire liability and they defined the liability of the common carrier.

Mr. SIMS. And that he could not recover above $100?

Mr. WRIGHT. They said the declaration of $100 was not a limitation of liability but that it was a representation upon which the party had secured the lower rate, and that there was nothing to prevent him from agreeing as to what the value was in advance of the shipment any more than there was afterwards, and the case was decided upon that basis.

Mr. SIMS. They held he could not recover more than $100?

Mr. WRIGHT. Yes, sir; and there are a number of other cases to the same effect.

Now, addressing myself to the question propounded by Mr. Stevens as to the propriety of making a certain rate and then providing certain alternatives in order that the shipper may carry the insurance himself, take out insurance somewhere else or pay a higher rate to the railroad company and get the insurance from them. I understand that is practically what the express companies do, Mr. Harrison?

Mr. HARRISON. Yes, sir.

Mr. WRIGHT. Now, it is a question of public policy whether that is best. I would have said that ought not to have been done prior to the time that the commission was given the power to regulate and fix the amount of the excess which they shall charge. But when they have, and when they can exercise that power and fix the amount which the carrier shall charge extra, if he wants to get the full insurance, then I say it is perfectly reasonable and I believe in the best interests of the public.

Mr. STEVENS of Minnesota. That is, that the shipper shall have the opportunity of either insuring with the carrier or going to an outside agency.

Mr. WRIGHT. Yes; I say he should have that opportunity. I think it is in the public interest that he should have that privilege.

I believe the commission has done a great amount of work on this proposition. I know that Commissioner Lane, for whom I have the most profound respect, spent a great deal of time upon that matter, and I think has arrived at a conclusion which is in the public interest; that is, there shall be the lower rate upon the lower value when a man desires to ship it; or if he does not desire to do that, he can cover it by outside insurance. But he ought not to be limited to that but ought to have opportunity to take it with the carrier at some slightly higher rate which would insure him the full value, and I believe that is the ultimate public policy that will be carried out.

The CHAIRMAN. Give him an opportunity in the first instance to pay the transportation alone and stand the insurance himself?

Mr. WRIGHT. Yes.

Mr. THORNE. Do you understand Mr. Lane's doctrine to be that the carrier and the shipper can agree on a value that is different from the actual value of the property in order to get a lower rate?

Mr. WRIGHT. Do I understand whose doctrine?

Mr. THORNE. Let me state it again. I understood you to say, or do you understand, that Commissioner Lane held that a railroad company and a shipper ought to be permitted to agree upon a value less than the actual value in order to get a lower rate.

Mr. WRIGHT. That is practically what it amounts to; but in the case of the express companies it is upon a declared value. It is fixed upon a value, not to exceed so much, and that is what it practically amounts to. That is the result of his opinion in the express cases.

Mr. THORNE. I desire to take up that matter later, but I wanted to get your opinion on it.

Mr. WRIGHT. Let me say another thing: I think very few have realized the full effect of this regulation of interstate commerce. I have said that there is no such thing as a contract between the shipper and the carrier any more, and that is pretty nearly true. Some of the courts of the United States have said that you can not put into your contract anything that is not included in your tariff because you must in that tariff define the full terms upon which the party has a right to make his shipment. It must show rates, the rules, the regulations, and the conditions. They held, again, that you could not in reference to this live stock, make any provision that you would transport it at a certain time unless it was stated in your tariff; that you could not give a man a service at a particular date unless it was in the tariff. So that to-day the carriers are not private corporations

alone; they are simply a quasi-public institution operating under the law, and they must move the shipments according to law.

Mr. STEVENS of Minnesota. If the right of individual contract between a shipper and a railroad were allowed, what would happen?

Mr. WRIGHT. The fact is that they are not in shape to meet on equal terms.

Mr. STEVENS of Minnesota. I know that; and knowing that, what would happen?

Mr. WRIGHT. I do not know.

Mr. STEVENS of Minnesota. A system of rebating would result, would it not?

Mr. WRIGHT. Absolutely; that would be one thing. I do not know what else would happen. Therefore, when you publish these tariffs the Supreme Court has said that it has the same effect as though it had been made by an act of Congress and put into your statutes. It provides certain terms. It says that the railroad will carry these things upon the terms stated in this tariff, and when the man presents a shipment we have to carry it, and we can not ask him to sign anything else, and he is not in a position to say in law, and he ought not to be in equity, that he does not know what is in that tariff. Now, I know it seems like a hardship in some cases, because even the railroads themselves do not know always what is in their tariffs, but that is the theory, and it is the only consistent theory upon which it can be operated. We are not to-day free to make our contracts at all. The terms of every contract are subject to the inspection of this other body, and their inspection is very active.

Mr. STEVENS of Minnesota. And we do not intend you shall have that right.

Mr. WRIGHT. I do not want it, and I hope the day will never come when we will have it, but what I do urge is that having been given that power that you shall not cripple them unless they misuse it. Now, in reference to the matter in hand here, there is no evidence that they are not acting or that they have not acted in perfect fairness.

Mr. ESCH. Mr. Lincoln in his testimony this morning indicated a fear that if this bill became a law and rates were based on valuation, it would throw into the discard the rates based on limited liability.

Mr. WRIGHT. I would like to say just one word upon that. Mr. Lincoln was speaking of the ordinary bill of lading applicable to all the commodities that move. When a commodity is given a certain class, whether it be of a low or a high value, it goes at that rate. The situation is entirely different in relation to commodites such as household goods where we have two rates, or live stock where we have three or four rates, or ore where we have two or three rates, or whiskies where we have two or three rates. There is some whisky in certain parts of the country worth only $1, which could not move under the whisky rate, and therefore they made a low rate where it is declared to be of a certain value. There are a few commodities of that kind where we have two rates on the same class of commodities.

Now, Mr. Lincoln was not speaking of those cases where we have two classes of rates. The ordinary bill of lading is copied in the tariff and the contract is simply a copy of the tariff on file, nothing more

or less, and it provides that if you ship under that bill of lading your rates shall be so much; that if you ship under the bill of lading, in case of loss or damage, you shall take the invoice price or the price at the point of origin. That changes the common-law rule. It provided that you must give notice within a certain time. If you want to ship under that rate and sign that contract and agree to that, all you have to do is to sign the contract and get that rate. Now, if you do not want to ship under that contract, if you want to have them settle under the common-law rule without giving notice within a certain time or take the value at destination rather than the point of origin, then you can ship it under the common-law bill of lading liability and you will pay the 10 per cent higher rate. It was not stated in cents. Instead of saying 75 cents in the first column and in the second column 82½ cents, they just say 10 per cent. Now, as Mr. Lincoln says, 99 per cent and probably 99.9 per cent of the goods move under that provision, because it was agreed to by the shipper, requested by the shipper, approved by them, presented to the Interstate Commerce Commission and approved by the commission, and they are willing to accept it. They prefer to take that than to take the higher rate with the common-law liability.

Mr. THORNE. When was that put into effect?

Mr. WRIGHT. I do not know the exact year. It was put in at a conference——

Mr. THORNE (interposing). About when? I mean the 10 per cent clause.

Mr. WRIGHT. I think it was about 1910.

Mr. THORNE. Was there any reduction whatever in the rates when that 10 per cent clause was inserted?

Mr. WRIGHT. I think not.

Mr. HARRISON. It had formerly been 20 per cent.

Mr. THORNE. The reduction was 20 per cent to 10 per cent.

Mr. HARRISON. Yes.

Mr. THORNE. When was the 10 per cent provision put in?

Mr. WRIGHT. I can not tell you. If the committee are anxious to find out, they will find that whole thing in the matter of the investigation of bills of lading. I can not give the docket number, but I can furnish it if it is desired.

Mr. LINCOLN. Mr. Wright, may I interpolate a few remarks right at this point?

Mr. WRIGHT. Yes; certainly.

Mr. LINCOLN. The uniform bill of lading was the result of a conference between the carriers and the shippers, subsequently approved by the Interstate Commerce Comission and was adopted in 1906.

Mr. WRIGHT. Shortly after the Carmack amendment.

Mr. LINCOLN. That is the limited liability bill of lading, and with the adoption of that bill of lading there was a provision incorporated in the tariff in one territory making the rate subject to common-law liability 20 per cent higher and in other territories 10 per cent higher. But if you are going back to that time, and if you are going to consider that proposition, you should not overlook this fact that prior to 1906 and under the old conditions, say, about 1900 or 1901, no shipments were accepted except under the bills of lading of the carriers. There was no alternative rate, and the bills of lading of

the carriers in effect prior to 1906, prior to the adoption of this uniform bill of lading, had so many provisions in it that nobody could read the conditions of that bill of lading even with a magnifying glass. If any court gave a decision favorable to the railroad, if the counsel for that road thought it was a good thing to put it in a bill of lading, they did it, and the shipper could only avail himself of one bill of lading, and all of his property was evidenced by that bill of lading, and it was only after the adoption of the uniform bill of lading, in order to get an alternative rate, one with limited liability and the other subject to the common-law liability, that it was necessary to provide for this penalty of 10 per cent or 20 per cent.

Mr. THORNE. Pardon me, one question. When that occurred did the railroads adopt as the basic rate the existing rate or did they make a general reduction or a general advance in existing rates? They did the first I named, did they not? They adopted as the basic rate the existing rates.

Mr. LINCOLN. I will answer that question. I was in the railroad service at that time, and when the uniform bill of lading was adopted they applied the existing rates to the conditions contained in the uniform bill of lading; but it must be borne in mind that with the establishment of the uniform bill of lading the terms accorded to the shipping public were vastly more liberal than the terms contained in the bills of lading prior thereto.

Mr. COWAN. Let me ask you one question. Mr. Lincoln, you were in the service of the Missouri Pacific and Iron Mountain for a long time. Did you ever read a live-stock contract through?

Mr. WRIGHT. Do you ask me that question?

Mr. COWAN. I am asking Mr. Lincoln that. You said you could not read the old bills of lading without a magnifying glass, and I am now asking you about the live-stock contract.

Mr. LINCOLN. If you want me to answer the question, I do not believe I ever read a live-stock contract through from beginning to end. I mean, of course, the live-stock contract in existence at that time.

Mr. COWAN. It would take as long to read one as to run a passenger train from here to Chicago.

Mr. WRIGHT. Years ago I presume that was true. The contracts now are quite simple.

Mr. COWAN. They are not simple. It would take as long to read one as to go from here to Baltimore.

Mr. LINCOLN. Not the present contract.

The CHAIRMAN. It seems to me if that contract is as interminable and intricate as Judge Cowan suggests the commission would abolish it very quickly.

Mr. SIMS. In the parcel-post practice I know that you pay a certain amount on a 10-pound package for postage, and then something additional for insurance, the two together constituting an entire charge. Do you know—I do not—the relative amount of additional charge for insurance which the Government has adopted?

Mr. HARRISON. Five cents for $25 and 10 cents for $50, and that covers only losses. It does not cover damage or injury.

Mr. SIMS. But they do include a charge which is called insurance?

Mr. WRIGHT. Yes.

Mr. WRIGHT. Yes; I knew they did that, but I did not know what the amount was. I think this is a question upon which people might differ as to which is the best public policy, and I think the commission should determine it after full argument.

Mr. SIMS. I suppose the commission was consulted in making this rate for the postal service.

Mr. HARRISON. Yes.

Mr. COWAN. Mr. Wright, let me ask you what Interstate Commerce Commissioner heard the case which we tried that involved this matter?

Mr. WRIGHT. It was assigned to Commissioner Hall, of Colorado; and his examiner, Mr. Gutheim, heard it and reported it to him, and the opinion will be rendered by the commission. It will be argued before the whole commission. They sent an examiner to take the testimony, but the testimony is in writing; it has been abstracted and briefed, and the case will be heard on oral argument and decided by the full commission. Mr. Hall was unavoidably prevented from being personally present at the time. He assigned it before himself in person to be heard at Colorado Springs. We went there at great trouble, a large number of us, and stayed there for days.

Now, I want to say in relation to what has been discussed here that the whole discussion has been upon the theory of limited liability, but what is really sought is to relieve themselves from responsibility for the statements which they make as to value. I am not saying whether the commission will or will not find we should make this difference. If the commission finds it is reasonable for us to make a higher rate on the animals which the man declares to be of a greater value to pay the insurance and the extra hazard we are subjected to, I think it is a question that they ought to be left to decide, and it is not then limiting liability, but it is allowing us to agree upon value. What has been said about passing these contracts out of the window, I know from actual signing of them myself years ago that that is not always so. It may be so sometimes. But they all see them in advance and know about them, and on our line at least the values are required to be written in the contract and blank spaces are left to be filled in.

Mr. COWAN. You have it printed also?

Mr. WRIGHT. What the rate is based on is printed.

Mr. COWAN. You first have it printed, and then a blank space and a place for him to sign; and the man has no chance to do anything but to sign it unless he pays a higher rate, which you admit is too high?

Mr. WRIGHT. I understand that; but that does not change the question of whether the commission should not be allowed to pass on the matter. If it was a question of continuing forever the 25 per cent increase on account of 100 per cent increase in value, I would say it ought to be wiped out in some way. Personally, I had a contract drawn at the time of the meeting of the committee which we had in 1913, and it would have been established on our lines months ago

except for this hearing. We did not want to go to the great expense of putting them out until the matter was decided.

The CHAIRMAN. Judge Cowan thinks the shipper has no alternative except to sign the contract or pay a higher rate. I want to ask you whether, if a document is placed there for him to sign which is not in accordance with the tariffs and the approved practices of the commission, he has not a right to say, "I will not sign it. You ship these goods; if not, I will litigate the matter in court."

Mr. WRIGHT. He has; and he would have an absolute right to do that, and we would pay for the full value, too.

Mr. COWAN. I do not agree to that when your tariff which is on file has this provision in it.

Mr. FAULKNER. You have the right to conclude, Judge.

Mr. WRIGHT. There is one other feature of this bill I want to speak of. It is now provided in the last clause of the bill that if the loss or damage occurs through the negligence of the carrier a suit can be brought without any notice whatever. In the uniform bill of lading and in our live-stock contracts we have certain provisions about notice. The shippers agree that some of them are reasonable and others they think are not reasonable. In the bill-of-lading hearing which we had that was one of the controversies we submitted to the commission—as to how much time they should have to give notice. Now, there are several reasons why we ought to have notice. On a line like ours, with nearly 8,000 miles, and there are other lines here which are longer, we can not know all the facts. I will give you just one illustration of a matter that came under my own observation and which I can testify to as a fact: Twenty-three months after a shipment of 10 carloads of cattle from my friend Judge Cowan's State, Texas, up to Nebraska, we were sued for $9,000 damages on that train of cattle of 10 cars, without any notice to us at the time, without any information or knowledge at all that any animal had been injured, and after the animals had been carried two winters on the range and shipped away to market, so that we could not even go to see whether they were dehorned or not.

Upon investigation we discovered that one car ran off the track and ran on the ties for some three or four miles, and the train crew put it back on in about half an hour, and it went on to the point of delivery. There was not a dead animal on the train, none hurt, or rather there was not any evidence of any being hurt. They had come all the way from Texas, and, of course, some of them had a few bruises. Now, is it right that you should pass a law that would allow a man to do that? That was in Nebraska, where we were not allowed to enforce this provision, and if this bill becomes the law we could not enforce it in our tariffs as to interstate shipment. At the uniform bill of lading hearing we had witness after witness in relation to that matter. In the uniform bill of lading we provide, I believe, for four months' notice. Some of them thought that was too short, some wanted one year, and said it took them that long to get their bills of lading back on grain and other things; but one man I remember particularly, from down at Nashville, arose and said that any man who could not get in a claim and notify the railroad inside of six months ought not to have a claim, and the carriers have said to the commission that we do not want any unreasonable time; that we

would be willing to agree to six months, but we want some time specified.

Now, let me call your attention to a particular situation that has arisen by reason of this very Carmack amendment. The initial carrier is now liable for the injuries that occur on a connecting line, under this Carmack amendment. I am not complaining about that. I think it is a good provision. I have no objection whatever to that provision rendering the initial carrier liable for its connecting line; but it has happened within the last two or three years especially that there have been a good many of these roads going into the hands of a receiver; a number of our connecting lines have gone into the hands of receivers, and the court named six months for filing claims. We have claims in our files now that by reason of this Carmack amendment we are required to pay where the connecting line on which the damage was done has been in the hands of a receiver and sold and closed up. Now, if you do not let us have some limit of time you are multiplying these cases. The courts of Minnesota, with which Mr. Stevens is familiar, are crowded with these damage claims that are brought there from all over the country, and many of them, or at least a number of them, are cases where they have not given any notice at all until the suit was commenced, which was years afterwards.

Mr. STEVENS of Minnesota. We have that up now with our bar association.

Mr. WRIGHT. You have taken that up as to one concern whose name I will not mention. That ought to be provided for in some way, not for the carriers themselves alone, but for the protection of the honest claimants and for the public interest, because all of these claims that we have to pay that we ought not to pay come out of the general public. We are but servants and must pass these expenses on to the general public. We want you to understand that even in this matter of live stock it is not material to us in the ultimate analysis where we get the money with which to pay these large claims, it is more a question of public policy as to how you shall distribute their burden; or whether you shall allow the man who has the low-priced commodity an opportunity to move that commodity on rates under which he can move it and charge the man who has a higher priced commodity, for whom the services are more valuable, a rate somewhat in proportion to the value of those services. Why, if we were allowed to take our pay the same way the millers, to whom perhaps some of you used to take your bags of corn to have ground and who took out a certain per cent of it that would make a rather equal distribution of the burden, but we can not do that accurately. We try in a large measure to do that by our classification, and we grade it upon value and upon bulk and upon other conditions under which it moved, but there are certain commodities like ore and candy, mentioned here the other day, and household goods and live stock, where we have divided them into classes according to the value, and whether that should be continued we will leave, after full presentation, to the Interstate Commerce Commission, and that is exactly what we ask and urge in this case.

Mr. ESCH. In the last paragraph of the Senate bill, and the same language is incorporated in the House bill, in the proviso with

reference to the goods being hidden from view by wrapping, boxing, or other means, it is provided that—

> The carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper.

The point that was suggested in the conference of the committee on the bill was whether we would give to the Interstate Commerce Commission the right to initiate rates by the use of the words "establish and maintain."

Mr. WRIGHT. I suppose the purpose of that was that they might establish the rates. That is broader than the clause allowing them to fix maximum rates, but I am frank to say to you, and this committee can take it under consideration, that I think the day will come, and it must come, when that commission shall be given the power to fix minimum rates as well as maximum rates. This bill, I should say, probably increases their power in that respect——

The CHAIRMAN (interposing). The verbiage is different in the House bill, is it not?

Mr. ESCH. I think it is the same.

Mr. WRIGHT. It says that the Interstate Commerce Commission may establish and maintain rates for transportation.

Mr. ESCH. That would give the commission an initiative which we have never heretofore given.

Mr. WRIGHT. They have the power on their own initiative to investigate the reasonableness of any rate, rule, practice, classification, or contract, and as a result of that investigation to make such order as might be made upon complaint.

The CHAIRMAN. Judge, if under that provision there—that if the goods are concealed so that they can not be seen the parties may fix the value—if it is right to agree on the value of the goods in a case where they are unseen, is it not just as right to do that with your eyes open?

Mr. WRIGHT. I think it is. I think they would be in better shape to agree on the value if the goods were seen. The fact is that it is impossible for the carriers in practice to determine the value of these live stock through the agencies which it must maintain at the stations.

There is no time for me to discuss the bill in its more general features——

Mr. SIMS (interposing). Before you conclude I would like to ask you a few questions. First, I want to ask you, Is it the practice of the railroads or is it their position that they have the right to charge the public with the results of the gross negligence of their employees?

Mr. WRIGHT. The practice is such that on our books it is included as a part of the operating expenses.

Mr. SIMS. And therefore it is not taken out of the stockholders?

Mr. WRIGHT. No, sir. Of course loss and damage to property are not always due to the negligence of the carrier.

Mr. SIMS. I said when it was due to their gross negligence.

Mr. WRIGHT. There is no separation of it.

Mr. SIMS. When a railroad company incurs a fine and pays the fine is that charged up to operating expenses?

Mr. WRIGHT. Yes, sir.

Mr. SIMS. And it does not make any difference to the stockholders?

Mr. WRIGHT. No, sir; unless it comes home to them indirectly. It is charged up as an operating expense in the reports, and of course it ultimately comes out of the stockholders, because it decreases the net earnings.

Mr. SIMS. As I understand it they are entitled to a reasonable rate after paying operating expenses.

Mr. WRIGHT. I would say, of course, that the commission, in considering and passing upon the reasonableness of a rate, would take into consideration any large item of that kind.

The CHAIRMAN. According to your view the railroads are permitted to recoup out of the public for everything they do.

Mr. WRIGHT. I do not think that necessarily, but in their annual reports of operating expenses it goes that way.

The CHAIRMAN. But practically they do.

Mr. WRIGHT. Practically they do, but the commission has in some cases taken cognizance of specific instances of that kind. But ordinarily loss and damage are treated as a part of the operating expenses. Now they require the companies to give a statement of their operating expenses—an itemized statement showing what those expenses consist of. That is before them, and they can see what they are. But in the ordinary transactions of business, it is looked on as a part of the operating expense. There will always be more or less loss and damage.

Mr. SIMS. It seems to me that if the stockholder was charged with it there would be less liability to accidents.

Mr. WRIGHT. He is liable in this sense, not directly in the first instance, but unquestionably it comes from him ultimately. Any increase of the operating expenses is ultimately felt by him. However, rates would have to be fixed upon such a basis that the ordinary loss and damage and wear and tear in the operation and management of the railroad must be taken care of in that way. Otherwise, you could not get men to invest in that kind of property.

Mr. SIMS. Where a railroad has violated the law of this country and incurred a fine we ought not to take it off.

Mr. WRIGHT. I think not, and I think the commission has taken the proper steps. That has not heretofore been a very important element, and we hope it will be still less in the future. By this I mean that penalties for willful violations of law ought not to be taken out of the shipper, but should reduce the dividend of the stockholder. But the ordinary loss and damage claim may rightfully be treated as an operating expense. This will reduce the dividends for a particular year, but ultimately the net revenue must be sufficient to interest capital. Hence in the last analysis the shipping public will pay these claims.

Mr. COWAN. Do you see any objection to making railroad companies liable for negligence.

Mr. WRIGHT. No; and the law prohibits us from relieving ourselves of negligence in specific terms.

Mr. COWAN. If there is a specific provision in a tariff with respect to railroad regulations or practices, and a right on the part of a shipper arises with respect to that matter, can he bring any suit in any court unless he gets a decision from the commission as to whether their rules, regulations, or practices are correct?

Mr. WRIGHT. Oh, yes; if it is an absolute violation of the provisions of the law. If those tariffs carry a violation of it they are absolutely of no effect.

Mr. COWAN. That is the very point; it is not a violation of the law.

Mr. WRIGHT. But if it is in accordance with the law, he can not.

Mr. COWAN. You have in your tariff a regulation with regard to the shipment of live stock from Omaha, we will say, to Chicago; that rule, regulation, and practice you must observe, and so must the shipper?

Mr. WRIGHT. Yes, sir.

Mr. COWAN. If damage results to him, growing out of that shipment, to which that rule, regulation, or practice applies, can he maintain a suit on the ground that it is unreasonable or discriminatory?

Mr. WRIGHT. No, sir; he can not do it; but, as a matter of fact, there are general rules and regulations. He can file his complaint without any cost; the Commission will send him a blank which he can fill out and file, and then they send their examiner right to his place of business to hear him.

The CHAIRMAN. Under this Carmack amendment he can disregard the whole situation and sue?

Mr. WRIGHT. Of course he can, if the contract is in violation of this provision of the Carmack amendment he can do it. That is what they held in the Croninger case, the Latta case, the Miller case, the Harriman case, and several others. The court decided that the rule did not violate the Carmack amendment, because it was not a limitation of liability. But if it was contrary to this amendment, then, of course, he could sue without going to the commission.

I want to thank the committee for its courtesy and consideration.

The CHAIRMAN. You may go ahead, Mr. Thorne.

STATEMENT OF MR. CLIFFORD THORNE, STATE HOUSE, DES MOINES, IOWA.

Mr. THORNE. Mr. Chairman, the principal question now at issue in the discussion seems to me to be whether the commission or Congress is the proper tribunal to rectify this situation. I think it can safely be said that we are all agreed that there is a wrong here that the live-stock shippers of the West have presented to you. The wrong has grown out of a decision of the Supreme Court that has caused more bitter condemnation and criticism amongst the live-stock men, the representative shippers of the West, than any other decision for many years. And we have come to you gentlemen to correct this condition of affairs. The decision of the Supreme Court is based upon an action by you—the Carmack amendment—the result of which I do not believe you men intended or anticipated. We

believe the Supreme Court has made a mistake, and we come to you gentlemen to correct it.

The raising of the valuation of live stock and the reduction of the percentage of increase of the freight rate in proportion to the increase of the value could be secured by application to the Interstate Commerce Commission, and probably will be secured if results are not accomplished here. I will be able to show you that, while that would be a substantial relief, it entirely fails to remove the greatest cause of complaint. I believe that the Interstate Commerce Commission could go further than that. The commission could prescribe a flat rate and abolish this effect that results from the graded rates, and thereby they could automatically make the carrier again responsible for full value on live stock.

If that be true, if they have that power, why is not that the tribunal for us to go to? You are entitled to a candid answer. Further, you have been told that this body of men has already brought a case before the commission. Why was that done? Why are we here before you and before the commission at one and the same time? I am probably responsible for that situation, and I desire you gentlemen to know the facts justifying it. I believe that you will agree with me that it was the only wise course to pursue.

I have tried a number of cases before the commission which have consumed several years before their determination. That is not different from the condition of cases before our courts. I am criticizing nobody. I have also tried to get some legislation before State legislatures and before Congress, and I know that consumes several years frequently. If a man sat down and waited until Congress acted positively or negatively and then brought his suit before the commission, or if a man brought a suit before the commission and would wait until that was determined by the commission and by the courts before going to Congress, it would postpone results from one to three or four years. Frankly, that is the reason for commencing both actions.

This is the tribunal, and the only one, that can give the relief that we need and which, under the present situation, can reasonably be expected. You have created the Interstate Commerce Commission to deal with administrative matters and possibly gradually build up law through the case system, if that be constitutional. The Supreme Court is building up law and developing rules of public policy governing all kinds of business, and you have delegated to the Interstate Commerce Commission the problem of working out the laws and determining the policy with reference to commerce. When we feel that the Interstate Commerce Commission or the Supreme Court of the United States is going along wrong channels, not upon a matter of detail but upon something of basic, fundamental importance, we think this is the tribunal to come to in order to put them right. We expect to come here in the future from time to time as that situation develops.

Mr. STEVENS of Minnesota. You have not covered one function that we have given the commission to be worked out, and that is the legislative function of prescribing rules, regulations, and practices for future conduct, especially as to minor matters. Now, is not this one of the rules, regulations, and practices as to minor matters that

should be worked out in a legislative way through the commission, rather than through the cumbersome wheels of Congress?

Mr. THORNE. Then the issue narrows down to whether this is of sufficient importance?

Mr. STEVENS of Minnesota. A good deal so.

Mr. THORNE. To come to Congress about?

Mr. STEVENS of Minnesota. That is a good deal so.

Mr. THORNE. I accept that as the issue.

Mr. STEVENS of Minnesota. It is one of the things to be considered.

Mr. THORNE. And I do want to consider the relative importance of all.

The CHAIRMAN. Could you not presume that you would receive practical justice if the commission, on your petition, abolished this practice of making that kind of contracts and classified live stock into dairy stock, breeding stock, race horses, or something of that sort? Can they not be classified and divided so that some of them which deserve a higher rate because of their higher value can get it?

Mr. THORNE. You have presented the problem whether we can reasonably expect that to be done by the commission, and I believe they are able to do it.

The CHAIRMAN. Are they not competent under the law to do it?

Mr. THORNE. I am sure the commission is competent to do it, but I believe they have made a mistake. They have enunciated a principle which is fundamentally unsound and which is against public policy. They have coincided with the doctrine announced by the Supreme Court of the United States in the Croninger case and later in the Harriman and other cases.

Mr. STEVENS of Minnesota. That is very important, and I would like to have you extend yourself on that.

Let me state specifically the position which the commission has taken.

In the Released Rate case (13 I. C. C., 550) the commission announced the following doctrine concerning a contract limiting the amount a shipper may recover for loss occasioned by a railroad company:

> The stipulation is valid, even when loss is due to the carrier's negligence, if the carrier has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith.

This principle is identically the same as the one recently taken by the Supreme Court in the Croninger, Miller, Harriman, and other cases, which are familiar to the members of this committee, and which has given rise to the widespread and bitter denunciation of stock shippers generally throughout the West.

We believe this doctrine which permits a carrier to contract against part of his liability for his own negligence is squarely against public policy. This statement by the Interstate Commerce Commission in 1908 had little effect upon the situation generally, because, as the commission itself stated, they did not have jurisdiction over liability claims, and, further, because the Supreme Court had not yet announced any change from the rulings formerly made in the Hughes and Solon cases, which I will discuss later. This change in the situation came, as you know, in January, 1913.

So long as this doctrine remains a settled policy of the Supreme Court it is in fact the law of the land, and it will be followed both in letter and spirit by the Interstate Commerce Commission. If that policy is wrong, this is the tribunal and the only tribunal which can remedy the situation.

A while ago I ask Mr. Wright whether his conception of Mr. Lane's doctrine in the Released Rates case was that a railroad company and a shipper could agree upon a rate that was much lower than the actual value——

Mr. WRIGHT (interposing). I did not understand you to ask me as to the Released Rates case, but as to the express opinion. That is what I was referring to, although I may have misunderstood you.

Mr. THORNE (continuing). Much lower than the actual value, thereby sharing the risk between them.

We believe the correct policy was stated by Mr. Commissioner Lane in the Released Rates case in the following words:

> Public policy forbids that a carrier should escape the consequences of his negligence. If public policy is opposed to stipulations designed to secure entire exemption from such responsibility, the same public policy is opposed to stipulation providing for partial exemption.

The same principle was clearly stated by Mr. Commissioner Lane in the same case as follows:

> If the shipper and carrier collusively agree that, for the purpose of the transportation, the property shall be deemed to have a specified value which both know to be greatly disproportionate to the true value, the agreement can not be called bona fide. It may be styled an "agreed valuation," but it is obviously an attempt to accomplish what the law forbids. The requirement that the carrier shall not limit in any degree its responsibility for negligence is uncompromising, and it will not yield merely because the parties choose to employ the phrase, "agreed valuation."

The commission clearly announced a public policy that is right, and then turned around and approved a rule, which in actual practice inevitably produces results directly against what they say is the public policy of the country. This rule is precisely the same as the one adopted by the Supreme Court, and enables the railroads to contract against liability for a part of the loss occasioned by their own negligence. These contracts limiting their own liability are not just occasional and incidental, but constantly, in 99 per cent of all the contracts for shipment that are made.

No decision by any court, either State or Federal, for many years, has caused more universal and bitter condemnation from representative stock shippers of the West than have these decisions. It must be agreed that the effect of this amendment was neither anticipated nor intended by you gentlemen who passed it. We believe the Supreme Court has made a mistake, and we come to you gentlemen to correct it.

When you created the Interstate Commerce Commission you did not intend to hand over to that body the whole subject of making laws and directing the public policy of this country on all matters concerning interstate commerce. And you have not turned that task over to the Supreme Court either. We do not propose to have any judicial oligarchy or commission oligarchy in the United States. Both of these tribunals are making law by the gradual process of the case—system. But, from time to time, when we feel they are

going along a wrong channel on a matter of basic, fundamental importance we intend to come before you gentlemen to set them right. We are here to-day for that very purpose. You are the supreme law-making body of this country, and we want that to continue. You have your ears down closer to the ground than those folks on that commission. And the probabilities are that they will get farther and farther away from the people as the years go by. You men are in constant touch with the actual needs and wants of the country as is no other department of our Government.

The subject matter involved in this controversy is not merely an administrative ruling. The fixing of a reasonable value on live stock, and of a reasonable percentage of increase in the rate for an increase in value, will fail to remove the real cause of the trouble, and I am going to show you why. Theoretically it would seem all right to permit the shipper and the railroad to have perfect freedom to determine, by mutual agreement before the shipment, the value of the article shipped, how much risk shall be borne by either party, and the freight rate to be paid. But in actual practice we find this creates great hardship, it encourages misbilling and deception, it causes discriminations in favor of the large shipper and against the small shipper, and permits a carrier to evade responsibility for misconduct and negligence of its own employees, all of which was clearly anticipated more than a century ago, and was declared to be unlawful and contrary to public policy and has been so held ever since by the weight of authority in this country, if you except the Supreme Court. And it was only since 1913 that its doctrine on this subject had any practical effect on the bulk of the traffic because of the other principle it has followed of enforcing the rules followed in the States, on causes of action arising in said States on interstate traffic.

A gentleman asked yesterday if a steer worth $150 should take the same rate as a steer worth $50. The answer is most emphatically yes. In the first place there are far greater variations in value on hundreds of other articles taking the same rate, and, in the second place, the difference in risk, while 300 per cent on the single animal, yet when it is averaged over the hundreds of thousands of cars handled it is absolutely infinitesimal in amount. Mr. Farrar has told you the cost of the additional risk if the carriers had assumed full liability on some 2,000 cars which he analyzed this year. His evidence before the commission was uncontradicted and unquestioned. The average for the additional risk was just 8½ cents per car, or about one-twenty-fourth of 1 per cent per 100 pounds. No company quotes rates on those fractions.

Shoes take the same rate, whether they are worth $1 or $7 per pair. Similar variations run all through the classification, on dry goods, agricultural implements, books, etc.

There is another objection to permitting these railroads to limit their liability, entirely aside from this matter of fostering discriminations. While not expressly permitting them to contract against liability for their own negligence, yet in practical operation it does produce that very result, which is universally recognized by all courts as contrary to the well-established public policy of this Nation and of every State in the Nation.

Why and in what manner do these results follow? The principal causes are, first, the railroad and the shipper are not on an equal footing; and second, there is no equality between the shippers themselves.

Rates should be the same for all, not subject to any fluctuations by contracts on extraneous matters. When there is a graduated scale of rates in accordance with various estimated values which determine the amount of risk assumed by the railroad, the man who ships 100 or 200 cars of live stock annually can declare his animals of the lowest value, and take the lowest rate. Later, when the accident happens, he puts in his claims in bulk, not just for the death of a few animals, but for delay, shrinkage, etc., and is able to include the full value of his cattle. The railroad solicits the business of the big man with the trainload. His claim is paid readily, while the small shipper receives entirely different treatment. This is true and will so continue as long as such favors are made possible and human nature remains what it is. Any honest claim agent or any large shipper who is honest, or his attorney, if there be such, will admit this situation. The only proper way to remove discriminations is to have one flat rate on each article or class of articles for all shippers.

We have been rapidly approaching that situation. There are several thousand different articles handled by the railroads named in their classifications. For instance, there are about 8,000 different items or descriptions of articles, though many of these items apply to the same article. Of all these 8,000 items there are less than 25 on which the rates are specifically graduated in accordance with value as they are on live stock. Three years ago candy was one of these articles, taking first class when it was worth over 15 cents per pound, and third class if 15 cents per pound or less. The railroads operating in western classification territory asked the commission to abolish these rates and make one flat rate for all candy, because of the misbilling and deception that was constantly being practiced. The dishonest shipper was getting the low rate. The railroads were unwillingly, but constantly, discriminating against the honest shipper who billed his goods at the correct value. As a result the commission abolished these double ratings. In the course of the argument before the commission Mr. Robert C. Fyfe, chairman of the committee representing all the western railroads between the Pacific coast and the Mississippi River, stated to the commission:

> On the general question of invoice or declared valuation it is the view of the carriers that provisions of that character can and perhaps should be eliminated from the tariffs, and reasonable rating established without reference to value The carriers are proceeding with this view in mind in their work in connection with uniform classification. (R. C. Fyfe in brief before I. C. C. in I. & S. 76, p. 18.)

A carrier takes possession of your goods and has control over them, to transport them for a long distance from your home or place of business. A sound public policy demands that such company shall be faithful to its trust as a public servant in the exercise of care and watchfulness. It must be diligent in the exercise of its functions in a careful manner. If carelessness and negligence be permitted or encouraged, the shipper is practically helpless. He does not own the machinery or the conveyance, and he is a trespasser on the right of way. The welfare of the public demands that such a company shall

not be permitted to evade by contract, stipulations, notice, or any other method the full liability for loss occasioned by its negligence. It is just as wrong to evade liability for half the loss as for all the loss occasioned by the carrier's negligence. It is just as wrong to steal one-half of a watermelon as a whole melon. The principle is the same in both cases.

Precisely the same arguments supporting the public policy that a carrier can not contract against total liability for negligence apply as to contracts partially limiting liability for negligence.

Collusion, misbilling, duress, compulsion, discrimination, lessening of precautions proper for the common carrier to exercise, all follow contracts relieving yourself from whole or partial liability for your own negligence. Safeguards are almost wholly within actual control of carrier. If he unloads part of the risk, it removes, to that extent, the incentive for precautions which it is his duty to exercise.

As an abstract proposition a man ought not to profit by his own fraud and misrepresentation, but a system of graded rates in accordance with value results in producing discrimination; the honest man pays the full rate while the dishonest man gets it in the shape of a rebate. It produces a laxity in care on behalf of the carrier, and it is contrary to the principle that was enunciated by Mansfield over 100 years ago, a doctrine that has been supported by the weight of authority in the United States, if you exclude the Supreme Court. The case of Hart *v.* Pennsylvania Railroad (112 U. S., 331) announced that doctrine, which was indorsed by Commissioner Lane. Later—I want you to mark that fact—later a case came up from Pennsylvania known as the Hughes case (Pa. R. *v.* Hughes, 191 U. S., 477), wherein the same issues that I have been discussing were involved, and the Supreme Court, following the Solan case doctrine, held to the effect that a carrier could not relieve itself from any part of its liability. That principle had been adopted by the Pennsylvania courts, and since that was adopted by the Pennsylvania courts the Supreme Court held that it should be enforced on interstate traffic, just as though it had been established by statute, under the principle of the Solan case. That is a rather novel principle to me. I had thought that the decisions of the Supreme Court on matters of common law were generally not controlled by the local decisions of a State jurisdiction, but nevertheless that was the doctrine. The State of Iowa had a statute saying that it is against public policy and that it is unlawful to contract to waive a part of the loss caused by your negligence, that you can not limit your liability, and the Supreme Court sustained that as applicable to interstate traffic, so long as the Federal authority did not undertake to regulate that subject. The State of Texas has a similar provision, and many other States have. There are a number of States that have decided the other way.

The great bulk of the live-stock traffic is located, as you know, in Missouri, Iowa, Texas, Kansas, Nebraska, and southern Minnesota. That is the live-stock belt. Commissioner Lane, in rendering the decision in the Released Rates case, did not discuss, if I remember correctly, the decisions in any one of those live-stock States. He discussed the rulings of the Supreme Court of the United States, on its interpretation of the common law, independent of those State

decisions. He took the Hart doctrine and showed that it had been followed. The live-stock traffic is the one that is most vitally concerned in this legislation. Let me disclose to you my reasons for saying that. You might think that a person interested in passing the legislation would have a prejudiced view in regard to it, and especially coming from a live-stock State, but I want to give you two or three facts demonstrating that situation: There is classification No. 52 [indicating book]. There are over 8,000 different descriptions of articles contained in that classification. The official classification has over 12,000. That does not mean that there are that many articles, because the same article may be described in various ways, but there are several thousand articles of freight traffic handled. Now, of all of those articles I believe Mr. Lincoln said there were just eight that had this graded valuation and rate structure for the making of freight rates on their shipments--ore, marble, rugs, brick, and a few others of that character.

They have taken practically everything out of that classification except eight articles that are governed by this system of charging freight rates. And now they want to extend it instead of further contracting. I think those steps were along the right lines.

Consider the actual condition of a shipper in my territory. Mr. Stewart, of Kalona, Iowa, handles 200 cars of live stock a year. He can send his stock at the lower rate. If the commission establishes a schedule of rates for live stock of different values we will certainly have low values and high values, and Mr. Stewart can select the low values. And under this policy of agreed valuations Mr. Stewart is committing an offense, but nevertheless he gets results. He ships his live stock at the lower rate, and when it comes time for collection he is not limited to the subject of total loss or dead animals. He has charges for delay, charges for shrinkage, and other items, and he can put in sufficient to cover his loss. The railroad company is far more ready to pay a liberal sum to Mr. Stewart in order to get his business than to the small shipper.

Mr. STEVENS of Minnesota. Then you think that can be used as a method of discrimination, do you?

Mr. THORNE. Unquestionably so. Mr. Cowan represents clients who ship trainloads of live stock and those people can go in and settle their claims without any trouble.

Mr. Farrar, the other day, had one of those claims and he went to the carrier and the carrier offered to settle for $800. Mr. Farrar thought that under all of the circumstances that might approach a reasonable sum. He told the shipper about it. The shipper said, "Never mind; let me attend to that." He went to Chicago and came back with $1,500. No suit and no delay. Senator Smith, of Osage, Iowa, a lumberman, gets his damage claims paid before he puts in the proof. They think he is an honest man, and, of course, he is. Who would deny it? The little shipper is treated differently.

Mr. SIMS. Is it the practice of the railroad company, in a matter of that kind, to pay the lump sum and charge the $1,500 up to operating expenses and ask no questions?

Mr. THORNE. Certainly. Just a word about that: I am willing to concede that many arguments have been forcibly and effectively

presented by Mr. Wright, but he stated one of the weakest propositions I have heard recently. You know that we have in our system of railroad regulation established no maximum rate of return for the railroads, as yet. We are trying to find where the minimum is. It is to their interest, of course, to save as much as they can and to make their earnings as large as possible. It is money in their pocket, every dollar they save.

The question of discrimination between shippers is conceded in the decision of the Supreme Court. In the Harriman case, Mr. Justice Lurton said:

> That the value of the cattle shipped under this valuation did greatly exceed the valuation therein represented may be true. It only serves to show that the shipper obtained a lower rate than he was lawfully entitled to have by a misrepresentation.
>
> When the carrier graduates its rates by value and has filed its tariffs showing two rates applicable to a particular commodity or class of articles, based upon a difference in valuation, the shipper must take notice, for the valuation automatically determines which of the rates is the lawful rate. If he knowingly declares an undervaluation for the purpose of obtaining the lower of two published rates, he thereby obtains an advantage and causes a discrimination forbidden and made unlawful by the first section of the Elkins Act of February 19, 1903—

And so forth.

It is not only a matter of creating discrimination between the small shipper and the large shipper; there is another element of even more importance than that. Carriers are our public servants. They take our goods away from our homes, our towns and localities. A shipper sends a clerk or a hired hand, if it is livestock and he is a large ranchman; or he may go himself. He is a trespasser on railroad property. The railway company has entire control over the equipment and over the handling of the trains. The railroad company must provide adequate means of safety to protect the freight traffic or the passenger traffic. Those conditions have been accentuated since carriers became almost exclusively railroad companies, but that situation obtained in 1785 in the Pittard case in England, where the justice presiding said that, for substantially the reasons I have stated, the liability of the carrier should be different from the liability of the bailee; that the carrier should be practically an insurer of goods, except for an act of God, public enemy, and the inherent nature of the goods. Exceptions have been added and added, until at the present time we are practically at the closing up of this contest. Those exceptions have not been adopted, as stated before, by the majority of the courts and States as wise public policy, but they were adopted by the United States Supreme Court when interpreting the effect of contracts in States where they did not have contrary decisions or statutes. The courts, in discussing this matter, constantly say that the carrier must not be permitted to contract against its negligence. The same reasons, the same principles, that justify the doctrine that a railroad company must not be permitted to contract against losses, against the entire loss due to the negligence of the railroad, support the other doctrine that a railroad should not be permitted to contract against its own liability for one-half or two-thirds of the loss caused by its negligence. The doctrine is precisely the same in each case.

Some objections have been made by Mr. Wright that I desire to discuss briefly.

Mr. COWAN. As to the railroads contracting against their liability, is it not a fact that the result of the decisions of the Supreme Court is that if they put it in the tariff——

Mr. THORNE (interposing). They can not contract against total liability, but they contract against partial liability.

Mr. COWAN. If they put it in the tariff?

Mr. THORNE. Yes, sir.

Mr. Wright made reference to different ores, and that they should be permitted to take different rates. That same proposition was presented before the Senate committee. I am not a miner. I have seen different grades of ore. It stands to reason that there must be some reasonable way of classifying ore the same as other things are classified. They classify live stock into beef cattle and feeders. There is the same objection with reference to horses. I do not see why you can not classify horses as stallions, blooded animals, and trotting horses. There has to be some reasonable, practical solution of this question. We can not go into all the intricacies, but we know with reference to thousands of articles that they have been able to classify them and that it has proved practical, although there is wide variation.

It was suggested a while ago with reference to the shipment of an article in a box hidden from view that it would be hard for the railroad company to be required to agree as to the value of an article when they could not see it, and if they could see it you forbade them to agree on the value. It sounds paradoxical when first stated; it seems that way. On the other hand, a very little consideration of the subject will certainly show the reason. If I bring in a closed box 3 inches long, 2 inches wide, and 1 inch deep, and I say it is a box of chocolates, and then later that is lost and I come into court and demand full damage for the contents of the box, and I prove that it was a diamond necklace worth $20,000, it is a hardship to make the carrier responsible for it, when they can not see what is inside of the box. On the whole, perhaps, it might be wise to say that when an article is hidden from view, and a man declares what its value is, that he should be limited to that value. This bill permits that. The carriers are permitted to require the shipper to state the value, and that value limits the liability. The express companies are going to claim that it is impossible to require it. The carriers have provisions in their classifications that have been enforced wherein a statement is furnished to the shipper and he is required to sign, and if he does not, a higher rate applies. The carrier can, under this act, provide adequate penalty to see that that provision is enforced, and upon failure to observe it the shipper loses.

One of the gentlemen the other day asked if it were not easier to determine the value before the cattle were destroyed than afterwards. It might seem that way to a person not actually shipping cattle, and not in touch with conditions. It is absolutely wrong. Any live-stock shipper of any experience at all will so tell you. Why? Live stock are shipped in a car, and when they get to the point of destination there is a bill of sale, and you know the average weight of the steers in that car. If there is one lost you can estimate approximately how much is lost; you know the market price, and that determines the loss. In the shipment of steers and live stock to market you do not

value each steer, have it numbered, or tagged; you have the average value in the car. The same rule applies to all other commodities, the shipment of dry goods, the shipment of anything else in boxes; there must be some estimate, some approximation, because the necessities of the business absolutely require it. It is workable. It has proved successful in Western States and throughout the entire live-stock district practically.

Mr. STEVENS of Minnesota. Would there not be this difference: A State like Iowa has a certain kind or grade of cattle; a State like Texas would have a certain kind or grade of cattle; a State like Minnesota, where we have a live-stock market, would have a certain kind of grade of cattle; and a State like Nebraska, where they have a live-stock market, would have a certain kind or grade of cattle, all running the same way, but each State would have a different kind, used for different purposes. Can you fix an average that would meet all of those diverse conditions?

Mr. THORNE. I am afraid that I did not make myself clear to you. I did not mean the average value of all steers; I meant the average value of the steer in a given car.

Mr. WRIGHT. A great many of them in the market are shipped out to be fed.

Mr. THORNE. The same thing would apply there. You classify steers into feeders and beef cattle, although the same steer goes into a different class when shipped in a different direction. This classification is workable and practicable. There is no reason why the commission can not devise a means for that. I am not asking you gentlemen to pass on that phase of the question; I am only asking you to consider the basic principle of public policy that has been the rule over this country generally and is in actual practice in the handling of the chief traffic affected, and that is live stock.

I want to show you how vitally live stock is concerned, as shown by the statement of Mr. Johnson before the Senate committee, which you gentlemen might have overlooked. In that hearing Mr. Johnson said:

> I also desire to lay particular emphasis on the commodity of live stock, for the reason that it is only with respect to that commodity that the Rock Island and other western carriers have had any complaint from the shipper, following the recent decisions of the Supreme Court, under which decisions traffic which has heretofore been transported subject to limited valuations have such valuations actually imposed in case of loss or damage, as previous to those court decisions the stipulations in the contracts—

Mark this—

> as previous to those court decisions the stipulations in the contracts and in the tariffs have generally been a dead letter, but with these decisions the claim departments have been properly insisting upon the fulfillment of the terms of the contracts.

Later Senator Cummins asked this question:

> Mr. Johnson, until January or February of 1913 the railroads did respond in cases of loss or damage for the full value of the property, did they not?
>
> Mr. JOHNSON. Yes; I think that was the general practice.

Mr. Commissioner Lane, in the Released Rates case, stated:

> It is therefore seen that these rules have existed for a long time. That they have been adhered to or that there have been any general efforts to enforce them may well be doubted.

So, prior to 1913, according to the decision of the commission, and according to Mr. Johnson, assistant freight traffic manager on the Rock Island, who appeared before the Senate committee on this particular bill, those provisions were a dead letter.

Mr. STEVENS of Minnesota. And your object is to continue the dead-letter period?

Mr. THORNE. Yes, sir; public policy demands it. I feel this, that when you come to weighing what you should do, the real pivotal question in your minds will be the relative importance of the doctrine; that is the pivotal issue before you.

I feel that a person making a statement before the committee might be in the position of an interested party, and perhaps you would not give as much weight to his statement as you otherwise might. I desire to call your attention briefly to a few statements made by men in whom you have confidence as to the importance of this policy as a doctrine.

I shall give a brief review of some of the leading cases mentioning the principle we have under consideration.

In the old case of Forward *v.* Pittard, 1 Term. Rep., 27, the English court stated:

> But, to prevent litigation, collusion, and the necessity of going into circumstances impossible to be unraveled, the law presumes against the carrier, unless he shows it was done by the King's enemies, or by such act as could not happen by the intervention of man, as storms, lightning, etc.

This English doctrine has been constantly hammered at by the carriers of goods. Exceptions multiplied so in the English decisions, that a statute was passed in 1854 attempting to deal with the question once more, and in detail.

In the United States the same attempt to force exceptions has been constantly made. These questions have arisen with greatest frequency in regard to live-stock cases. Most of the live-stock States, as we have previously stated, adopted the rule, by statute or otherwise, that the carrier should not contract against its own negligence. Some States have permitted "reasonable and fair limitations" upon liability, but have quite generally held the carrier could not contract against his own negligence.

Solon *v.* C., M. & St. P., 169 U. S., 133, is a leading case giving full effect to the Iowa statutes making attempted limitations upon liability void. This was so held, though contrary to the interpretation of the common law by the Supreme Court of the United States in the Hart case, supra.

Subsequent to the Hart decision by the Supreme Court there have been certain qualifications or emphasis placed upon some phases of the doctrine there announced, as follows:

First. The contract must be bona fide; and

Second. The difference in the rate must be reasonable.

Justice Lurton in the recent liability cases has ruled that the terms of the contract are presumed to be reasonable when they are embraced in tariffs filed with the Interstate Commerce Commission. The leading cases establishing these principles are:

Adams Express Co. *v.* Croninger, 226 U. S., 491, wherein the shippers sought to obtain $137.50 damages by reason of the loss of a diamond ring, whereas the contract signed by the said shipper only called for $50. The contract was held valid.

Chicago, B. & Q. *v.* Miller, 226 U. S., 513, involving the loss of a horse, damages being $2,000, whereas the contract called for $200. The contract was sustained.

M., K. & T. *v.* Harriman, 227 U. S., 657. In this case cattle to the value of $10,640 were involved. The court sustained the contract limiting the liability of the carrier, though contrary to the Texas law, the shipment being interstate.

Up until January, 1913, the Supreme Court held State statutes prohibiting the limitations of liability were valid both as to State and interstate traffic, so long as there was no action by the Federal authority. By the foregoing decisions, and others, the Supreme Court ruled that Congress had undertaken to regulate this subject by the Carmack amendment, thereby invalidating State law applicable to interstate traffic. Other cases announcing similar principles during the past two years are as follows:

Chi., St. P., M. & O. *v.* Latta, 226 U. S., 519.
Wells, Fargo & Co. *v.* N., 227 U. S., 469.
K. C. So. *v.* Carl., 227 U. S., 639.
C., R. I. & P. *v.* Cramer, 232 U. S., 490.
Great Northern *v.* O'Connor, 232 U. S., 508.
B. & M. *v.* Hooker, 232 U. S., 97.
A., T. & S. F. *v.* Robinson, 233 U. S., 173.
A., T. & S. F. *v.* Moore, 233 U. S., 182.
A., T. & S. F. *v.* Harris, 234 U. S., 412.

The proposition I urge is that the doctrine now prevailing generally on interstate traffic since January, 1913, permits contracts freeing carriers from liability for part of the loss occasioned by their own negligence, and this doctrine is just as vicious in essence as one totally exempting the carrier from liability. The holdings of some of the various courts that have considered the vice in the general rule permitting contracts against negligence are the following:

Public policy and every consideration of right and justice forbid that a common carrier should be allowed to stipulate for exemption from liability for losses or injuries occurring through the want of his own skill or diligence, or that of the servants or agents he may employ, or through his or their willful default or tort.

Alabama G. S. R. Co. *v.* Little, 12 Am. & Eng. R. Cases, 37; 71 Ala., 611.

Georgia Pac. R. *v.* Hughart, 90 Ala., 36.

Louisville & N. R. Co. *v.* Wynn, 45 Am. & Eng. R. Cases, 312; 88 Tenn., 320.

Taylor & Co. *v.* Little Rock M. R. & T. R. Co., 18 Am. & Eng., 590; 39 Ark., 148.

Little Rock M. R. & T. R. Co. *v.* Talbott, 18 Am. & Eng. R. Cases, 598; 39 Ark., 523.

Southern Exp. Co. *v.* Meyer, 94 Ark., 103; 125 S. W., 642.

St. L., I. M. & So. R. *v.* Dunn, 94 Ark., 407.

Phœnix Ins. Co. *v.* Erie & Co., 10 Biss. (U. S.), 18.

Maynard *v.* Syracuse, B. & N. Y. R. Co., 71 N. Y., 180.

N. J. Steam Nav. Co. *v.* Merchants' Bank, 6 How. (U. S.), 343.

Copehart *v.* Seaboard & R. R., 81 N. C., 438.

Galt *v.* Adams Exp. Co., 4 MacArthur & M. (D. C.), 124.

The ruling of the Supreme Court of the United States has been uniformly against the validity of all contracts to exempt a common carrier from liability for loss resulting from any negligence. The earlier English cases were in entire accord with the decisions of the Supreme Court of the United States. But the later decisions made between 1832 and 1854 hold the opposite doctrine. Ohio & M. R. *v.* Selby, 47 Ind., 471; 8 Am. Ry., 177.

While I think that any innovation upon the common-law rule will always be found the cause of more harm than good, yet I think this court is bound by the authority of the case of the New Jersey Nav. Co. *v.* M. Bank (6 How., 343). In that case the court held that a common carrier might by special agreement with the shipper limit his liability as an insurer, but not for negligence of himself or servants. (Seller *v.* Steamship Pac., 1 Oregon, 409.)

In Ry. Co. *v.* Wynn (88 Tenn., 320) the court held:

The carrier can not by contract excuse itself from liability for the whole nor any part of a loss brought about by its negligence. To our minds it is perfectly clear that the two kinds of stipulations—that providing for total and that providing for partial exemption from liability for the consequences of the carrier's negligence—stand upon the same ground and must be tested by the same principles. If one can be enforced, the other can; if either be invalid, both must be held to be so, the same considerations of public policy operating in each case.

With great deference for those who may differ with us, we think it entirely illogical and unreasonable to say that the carrier may not absolve itself from liability for the whole value of property lost or destroyed through its negligence, but that it may absolve itself from responsibility for one-half, three-fourths, seven-eighths, nine-tenths, or ninety-nine one-hundredths of the loss so occasioned. With great unanimity the authorities say it can not do the former. If allowed to do the latter, it may thereby substantially evade and nullify the law, which says it shall not do the former, and in that way do indirectly what it is forbidden to do directly. We hold that it can do neither. (13 I. C. C. Rep., p. 555.)

In the case of New York Central *v.* Lockwood, a case arising in New York, Mr. Justice Bradley, speaking for the Supreme Court of the United States, said:

The carrier and his customer do not stand on the footing of equality. The latter is only one individual of a million. He can not afford to haggle or stand out and seek redress in the courts. He prefers, rather, to accept any bill of lading or sign any paper the carrier presents, often indeed without knowing what the one or the other contains.

Mr. STEVENS of Minnesota. What is the citation of that case?

Mr. THORNE. Eighty-fourth United States (17 Wall.), 357. That decision contains an able review of the decisions on the common law doctrine. Toward the conclusion of the discussion the court stated:

The conclusions to which we have come are:

First. That a common carrier can not lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law.

Second. That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants (id., 384).

The Interstate Commerce Commission, when it announced this doctrine to which we take such serious exception, I do not believe were trying to state what should be the law. They were merely trying to apply what they felt was the law, and I believe they correctly announced the rules as held by the Supreme Court of the

United States at that time under the Hart decision, when not controlled by State decisions or State statutes.

Mr. DECKER. How many States in the Union are there that do not have a law preventing the railroads from limiting their liability?

Mr. THORNE. I do not know. I suppose over half of them do not have it.

Mr. DECKER. Most all of the live-stock States have such a law?

Mr. THORNE. Yes, sir; most of the States where the largest live stock traffic is.

Let me finish the thought I was just stating. In evidence of the fact that the Interstate Commerce Commission was not trying to state what the rule ought to be on this subject, I call your attention to the statement of Commissioner Clements before the Senate committee:

> You will find in the document just inserted in the record [referring to the released rates decision] a recognition of the legality of the rates based on the law. It does not necessarily mean what we understand to be the law. It does not necessarily mean what we think ought to be the law. We were endeavoring to ascertain what was the law as construed by the Supreme Court.

That is contained in the hearing on Senate bill 667, Sixty-third Congress, February 24, 1914, page 30.

Mr. DECKER. What is your idea as to the effect of this decision upon other rates besides live stock?

Mr. THORNE. I was just going to approach that in view of Mr. Lincoln's claim. Is that what you have reference to?

Mr. DECKER. Yes; that was my idea.

Mr. THORNE. Mr. Lincoln makes the claim quite seriously——

Mr. COWAN (interposing). I am not certain about that.

Mr. THORNE. With a serious face, then, without a smile on it, that there are two rates in this territory, and the invalidating of one will leave the other the one to be charged, resulting in an advance in freight rates of 10 per cent throughout this territory.

Mr. DECKER. If you will pardon me, I do not think he stated that. I think Judge Adamson was trying to present his theory, and he said that, accepting Judge Adamson's theory, that one was based on the other; if you knocked out the basis you would only have the other one left.

Mr. HARRISON. He said he feared that, otherwise he would not be here, and Mr. Chandler is the one who mentioned the 10 per cent increase.

The CHAIRMAN. Are you complaining about the operation of this provision on anything except cattle?

Mr. THORNE. If the doctrine as I have stated it is sound as to cattle, I will ask the question Mr. Reed asked over in the Senate, "Why is it not sound as to all other traffic?"

The CHAIRMAN. I understand that, but are you taking any interest in the matter as to other commodities?

Mr. THORNE. No; not particularly, except as a public servant. I am not here representing live stock. I believe the policy is sound. So far as personal preference is concerned, I would have preferred the Cummins bill as recommended by the committee of the Senate, rather than have the amendment made striking out the Cummins provision permitting the commission to make a variation from the

rule. I would have preferred that, but I find that the securing of legislation is a practical matter; that there must be some compromise, some give and take, and an amendment at this time will practically kill the measure for the present and the commission will be confronted with a decision in this case when Congress has not acted on this proposition.

The CHAIRMAN. Whether relief be secured through direct act of Congress or through appeal to the commission, in either case can not cattle be taken care of by classifications without disturbing the situation as to the other 99 per cent?

Mr. THORNE. I believe it could, Mr. Chairman, but have you heard any opposition from any other person that has rate according to value? Mr. Lincoln comes here representing the great bulk of shippers who do not have that kind of rate. There are only about 8 or 10 of these articles in his territory.

The CHAIRMAN. We do not give him any weight on account of whom he represents, but on account of the testimony he offers.

Mr. THORNE. He does not purport to represent by his testimony——

The CHAIRMAN. His testimony is what we look at, not his credentials.

Mr. THORNE. I do not recall any sentence in Mr. Lincoln's testimony before you wherein he claimed that the shippers who had graded rates objected to the full liability for which we are fighting.

The CHAIRMAN. He said they were not asking for this legislation.

Mr. THORNE. He represented the men who do not have these graduated rates and limited values. There are only 8 or 10 articles affected. He is concerned about the multitude of shippers who handle the other 95 per cent of traffic, who do not have the rates graded according to value.

Mr. WRIGHT. I could speak from experience about those who have graded rates on copper, and they are very anxious to keep them. I have had consultations with them about it.

Mr. THORNE. I do not question the truthfulness of your statement. There may be a few others. I should imagine if there was competition in any line of business whereby a man profited if he got the bulk of the business, the large shipper would prefer to have this system of rebating and discrimination continued; but if it is a wise public policy as to live stock, why is it not a wise public policy as to other traffic?

I want to discuss that 10 per cent proposition of Mr. Lincoln's. Here is a uniform bill of lading with a clause in it providing for a 10 per cent advance. If this bill goes through, that clause becomes invalidated. There is no reason why the rest of the bill of lading can not be signed up or some other contract signed up. There is nothing compelling a man to take any particular thing, according to the statement they made a while ago. If that clause is stricken out by the Interstate Commerce Commission, it will take about three sheets of paper, a supplement to this classification, without reprinting the classification at all, canceling the effect of that clause. They are continually making these little supplements and making slight changes in the classification. There is no occasion for reprinting the whole volume. There are three principal tariffs in the country—official, western, and southern—which contain that clause. There

may be a few other rare, isolated tariffs. I asked the chief of the tariff department of the commission, and he did not know of any, but there may be some. At any rate, that covers 99 per cent of the traffic of the country.

If the commission does not act, a fair interpretation of the legal effect of the bill would be the invalidation of that part of the contract. That is precisely what happened in the Solan case and in the Hughes case, to which I have made reference. The rates stood just as they were; there was no automatic advance in rates. That matter is practically an adjudicated proposition; and if there was any possibility of this absurd universal advance of 10 per cent, no man can stare me squarely in the face and seriously claim that the commission would perpetuate it. The commission would cancel it immediately.

Mr. STEVENS of Minnesota. The bill itself would fix that. There would be no difficulty about that.

Mr. THORNE. I do not believe that Mr. Wright seriously considers that there is any intention on the part of the railroad to claim——

Mr. WRIGHT (interposing). I said that it was doubtful whether they might do it, but I think it is true that the commission would straightway readjust the rates. However, I think it would result in slight variations and increases in rates.

Mr. COWAN. If the railroads thought that it would result in an advance of rates, do you know why they would not be for the bill——

Mr. WRIGHT (interposing). There would be no permanent advance to that extent at all. Nobody would consider it.

Mr. THORNE. The original common-law doctrine, as I said a few moments ago, was that the carrier could not limit its liability. It was practically an insurer of the goods, except for the act of God, except for the act of the public enemy, and except because of the inherent nature of the goods. In some cases some of the courts have been gradually adding exceptions to that doctrine. Lately they have added these:

A carrier of freight is an insurer of the goods transported, and can not limit its liability against loss or damage:

First. Except those occasioned by acts of God, such as lightning, flood, earthquake, etc., as distinguished from the acts of man.

Second. Except those occasioned by the act of a public enemy.

Third. Except those occasioned by the inherent nature of the goods.

Fourth. Except those occasioned by the public authority, such as quarantine.

Fifth. Except those occasioned by the act of the shipper.

Sixth. Except by estoppel, the shipper misrepresenting the character of the goods.

Seventh. Except by bona fide contract, wherein the shipper assumes part of the risk upon terms that are reasonable.

Eighth. Except by contract, wherein the shipper assumes part of risk of negligence by carrier; said contract being presumed to be reasonable and bona fide, because in accordance with the terms of contract filed with the Interstate Commerce Commission.

Now, these decisions of the courts had been of no practical, far-reaching importance throughout the country until last year, when we were suddenly confronted with this doctrine in this last exception to which I am making reference being applicable to all of our traffic. That means that the carrier is no longer responsible for its misconduct and negligence so far as a large part, sometimes two-thirds, of the loss and damage is concerned.

The CHAIRMAN. Who is the author of that last edition of the common law?

Mr. THORNE. I think that commenced with the Hart case—the case of Hart *v.* Pennsylvania. It did not become applicable to our traffic generally, however, until the decisions in the Croninger case and the Harriman case of last year. That doctrine is in force; it is against public policy; it is contrary to a principle that is fundamental to the duties of the carriers, but the Interstate Commerce Commission has practically adotped it. Why? Because they found it in a decision of the Supreme Court. It is our belief that the principle is wrong fundamentally; it works hardship and permits collusion between the shipper and the railroad company.

The CHAIRMAN. Is that a corruption of the doctrine of contributory negligence?

Mr. THORNE. I think it is somewhat corrupted. We come to you because this is the last ditch. Within two years this doctrine has been wiped off the law books, but it was not wiped off intentionally by you gentlemen. The old common-law doctrine of liability that prevailed generally throughout our States was in force, and you did not know that you were changing that situation when the Carmack amendment was made. I believe that the Supreme Court acted erroneously, and you are our only resort.

The CHAIRMAN. This committee did not try to do anything when it undertook to put in what afterwards became the Carmack amendment, except to fix the venue at the option of the suitor with the initial carrier, but the Senate got it over there and ruined it.

Mr. THORNE. That is where the responsibility rests; the Senate has tried to straighten out the tangle, and I hope the House will help us.

Mr. COWAN. Let me ask you a question: Does it not all come down to this, that the Supreme Court considered that inasmuch as Congress had enacted a law respecting the liability of connecting carriers in the form of the Carmack amendment, and inasmuch as the law required the filing of tariffs with the Interstate Commerce Commission, when the tariffs were filed which fixed a different liability from that of the common law it became a statutory obligation on the carrier which the shipper must comply with?

Mr. THORNE. I think you are correct.

Mr. COWAN. One more question, and I am through: I asked the same question of Mr. Wright, whether a shipper can for any purpose maintain a suit where the measure of liability or want of liability is dependent on the carrier until he first has a decision of the commission in that particular case? Can he do that in any court, State or Federal?

Mr. THORNE. I believe that he can maintain a suit if the tariff is on file with the commission. I do not think there is any question about that.

Mr. COWAN. I understand that he can not maintain a suit at all until after he shall have had a judgment of the commission.

Mr. WRIGHT. If he has complied with the tariff which is on file; if it arises out of that and is not one of the prohibited provisions——

Mr. COWAN (interposing). If the tariff is a lawful tariff, then you must first get the decision of the Interstate Commerce Commission.

Mr. THORNE. It is not necessary to get a decision to make the tariff lawful.

Mr. WRIGHT. If there is any provision in that tariff that is not lawful, and it is in violation of the act to regulate commerce——

Mr. THORNE. It is accepted as the lawful rate throughout the country immediately upon being filed.

Mr. WRIGHT. Suppose they put in that tariff something which is entirely prohibited by the Interstate Commerce act; the court would decide that as a primary question.

Mr. COWAN. Suppose this bill, which prohibits the carrier from limiting its liability, should pass, and then the carrier should file a tariff which does limit its liability for negligence, then that tariff would be unlawful.

Mr. WRIGHT. Undoubtedly. If the law prohibited the limiting of liability and if the carrier filed a tariff which did limit its liability, then that tariff would be unlawful.

Mr. COWAN. There is one point—if I may just use a second or two—that this committee has apparently not very seriously considered, at least from questions asked.

The CHAIRMAN. Sometimes we consider seriously many things we do not ask you about, because we do not want to disturb the trend of your discussion.

Mr. COWAN. The difficulty of the proceedings before the Interstate Commerce Commission is not because of the commission not desiring to do certain things. Let me present the practical side of the ordinary shipper, and I will take a particular example. I am sorry Mr. Rayburn is not here so that I could refer to him. I will cite the case of a man who shipped two or three carloads of calves to Kansas City; some of them were killed. Of course they always claim that the railroad killed them. The calves sold for $28, but the railroad company could not pay him more than $10, because it was so named in the tariff. The shipper could not get more than $10 for calves worth $28. Now, if he could go into court and sue to recover, that would be a different proposition, but he can not do it unless he has gone before the Interstate Commerce Commission and gotten them to decide that that regulation was unreasonable or discriminatory or that in some way it was in violation of the law. It is not possible for them to declare that the railroad shall not limit its liability for negligence, but Congress can so declare and intended to do so, undoubtedly, in the Carmack amendment, and the rule in most of the Western States is that they must not limit their liability for their negligence.

The CHAIRMAN. According to the language of the bill it seems that you are attempting to apply this law to foreign commerce beyond the seas.

Mr. COWAN. That has been agreed to. We have written letters to Senator Sheppard and Senator Cummins, and Mr. Claude N. Bennett, who is here, called attention to that. However, I do not think it means that, at least it was not intended to mean that, but it has been agreed that the term "adjacent" may be used.

The CHAIRMAN. Referring to Canada and Mexico.

Mr. COWAN. If you use the term "adjacent foreign countries," you will then cure that.

Mr. DECKER. I have wondered, like the rest of you, whether this could not be cured at the Interstate Commerce Commission, but this

occurs to me, and I would like to have Mr. Thorne answer it: If the Interstate Commerce Commission should entirely change that bill of lading contract and cut out values altogether, that would settle the thing for all time, but if we pass a law that prevents the limiting of liability, then that settles it for all time, or until it is changed by Congress, and all rates thereafter made by the Interstate Commerce Commission would be based on that proposition.

Mr. THORNE. Precisely; and you are settling it as it has been for the last 100 years.

Mr. DECKER. That is, it has been so in the livestock States?

Mr. THORNE. Yes; where the bulk of the traffic affected arises.

Mr. DECKER. You say that about half of the States, though, have not prevented the railroads from limiting their liability?

Mr. THORNE. Perhaps six.

Mr. WRIGHT. The Senate committee report shows the exact States.

Mr. THORNE. But that is not a correct statement; it does not have the latest Kansas case nor that of Tennessee or Missouri, and Texas is entirely omitted.

(Thereupon the committee adjourned to meet Wednesday, September 30, 1914, at 10 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, September 30, 1914.

The committee met at 10 o'clock a. m., Hon. William C. Adamson (chairman) presiding.

The CHAIRMAN. The committee will come to order.

STATEMENT OF MR. R. B. SCOTT, GENERAL ATTORNEY CHICAGO, BURLINGTON & QUINCY RAILROAD CO., 547 WEST JACKSON BOULEVARD, CHICAGO, ILL.

Mr. SCOTT. Mr. Chairman and gentlemen of the committee, after the very able and very full presentation of the carriers' case, which Mr. Wright made before this committee last week, it might seem like a work of supererogation for me to talk on this bill, but the bill is so important, both to the shippers of the country and to the carriers of the country, that I make no apology for asking for a few minutes of your time to present to you some considerations in connection with it.

You must have been struck with the uniqueness of the situation presented here last week in connection with this bill. Contrary to the old order of events, you found the carriers here upholding the hands of the Interstate Commerce Commission, insisting that the commission was capable of dealing with this problem and had the power to deal with it; and you found some of the shippers, a very small percentage of the shippers—I desire to call your attention to that—but that small percentage of the shippers was somewhat inclined to criticize the Interstate Commerce Commission and to resort to Congress for the relief which they seem to think they are entitled to.

Now, it is not necessary for me to say to this committee that the Interstate Commerce Commission is an expert tribunal, well informed, as the Supreme Court has said, by experience, endowed by the Congress with full power to deal with this matter. Section 1 of the commerce act expressly makes it the duty of the carrier to establish, observe, and enforce just and reasonable regulations and practices affecting the issuance, form, and substance of bills of lading. Section 12 of the commerce act makes it the duty of the commission to enforce the provisions of the act, and the gentlemen who were here last week on behalf of the live-stock interests know full well that the commission has the power to deal with this situation. That is shown by their acts.

There are pending now before the Interstate Commerce Commission four separate proceedings involving bills of lading, in one form or another, and I want to make definite reference to those in the record, so that resort may be had thereto if desired. In the first place, there is the uniform bill of lading investigation, which is the commission's docket No. 4844. That investigation occupied days and days of time in the taking of testimony. The shippers were fully represented. Mr. Lincoln, who appeared before you last week, appeared among others in behalf of the shippers, and there were literally thousands of pages of testimony taken in that case. The case was fully briefed, it was orally argued, and is now under consideration by the commission. The commission furthermore has initiated an investigation of its own into the subject of released and nonreleased rates. This investigation was made on its own motion and bears docket No. 6997. As yet no testimony has been taken in that proceeding. It has just recently been initiated, but it is on the commission's docket, and it is fair to assume that in due course the commission will make a full investigation of that subject.

The CHAIRMAN. The question of released or nonreleased rates is the very thing involved in this bill.

Mr. SCOTT. Yes; the very identical thing.

The CHAIRMAN. As I understand it, a released rate means that they will not claim indemnity beyond a certain amount?

Mr. SCOTT. The terms released rate and declared value are used interchangeably by the courts although there is a slight distinction. They have been used interchangeably for years.

The third case I desire to direct your attention to, which is pending before the commission and which involves this proposition, is docket No. 6766, entitled the Iowa Board of Railroad Commissioners, the American Live Stock Association, the Corn Belt Meat Producers Association, and the Cattle Raisers' Association of Texas against the various carriers. I hold in my hand the brief filed on behalf of the complainants in that case. This brief is signed by Judge Henderson, the commerce counsel of Iowa, who appeared before you last week, it is signed by Judge Cowan, on behalf of the American National Live Stock Association, and also on behalf of the Cattle Raisers' Association of Texas; and that case, as Mr. Wright told you, occupied three days of time at Colorado Springs in July in the taking of testimony. It has been briefed, and it will be orally argued next month before the commission. It involves the identical proposition that this bill involves. I will read you

simply one heading in the brief filed by Judge Cowan and Judge Henderson in that case:

Argument: The limitation of value should be eliminated.

That is the very proposition they are arguing before you here. Further over they say that if the commission see fit not to eliminate the declaration of value that then they claim our values are not high enough and should be raised and our rates of insurance should be reduced.

Mr. Esch. Can you give me a copy of that brief?

Mr. Scott. I can obtain one, and I will be very glad to do so.

The fourth case pending before the commission involving the question known as the National Society of Record Associations against the carriers is docket No. 6825. That case makes a defendant of practically every carrier in the United States. I do not believe they overlooked one. It was filed particularly on behalf of the breeders of thoroughbred stock, as the title indicates. That case has not yet been heard, but is pending upon the docket of the commission.

The Chairman. What do they ask?

Mr. Scott. For a revision of the values. They claim our values are too low in our tariffs and live-stock contracts and our rates of insurance too high.

The Chairman. What is the reason it is not perfectly competent for the commission to approve filed rates under the classification law covering this whole subject in every phase, so far as the different grades and breeds of live stock are concerned?

Mr. Scott. Mr. Chairman, I believe the whole thing is within the power and jurisdiction of the commission, and there is absolutely nothing to prevent them from granting these people the relief to which they are entitled, if they are entitled to any relief at all.

The Chairman. The provision with reference to classification put into the act of 1910 gives them plenary power governing the whole matter of classification.

Mr. Scott. Yes, sir. I did not read that provision because, of course, you are entirely familiar with it. I read only the part relating to bills of lading.

Mr. Rayburn. Are you resisting the proposition with reference to the claim they make with reference to values?

Mr. Scott. It is conceded by us in this very case, docket No. 6766, that a great deal of live stock moves at values much higher than the values named in our contracts. I myself feed steers. I ship steers to the market worth more than $50. That steers often exceed such value is common knowledge, and that is conceded by us, but it is also true that steers frequently are shipped which are of lower value than $50. We further concede, as Mr. Wright told you last week, in our printed brief in this case, and we would be glad to file a copy of our brief along with a copy of theirs—that the 10 per cent charge that has been made in the past for this increased insurance is unreasonably high, and we have said to the commission, "You should fix what is a reasonable charge and we will be content with it." So that we are not resisting the proposition that they should be entitled to ship their live stock at higher values if they choose, nor that they

should not be permitted to do that at lower rates of insurance than they have been in the past. But we do insist before the commission and we insist here that we have a right and that it is proper that our rates should be based upon these valuations and that our contracts should be governed accordingly.

A great deal was said here last week about these contracts limiting liability. They do not do anything of the kind. It is a confusion of terms to talk about their limiting liability. The Supreme Court, in the Croninger case, to which reference was made here last week, said that the proposition that the carrier could not limit its liability for negligence was elementary. Any law student knows that, and nobody contends that we have that right. Nobody contends that we have the right to limit our liability for negligence. We are not insisting upon that. We do say and the Supreme Court said in this series of cases that we did have a right to require a declaration of value from the shipper, and we have a right to grade our rates according to that declaration and to limit the amount of recovery to that declared value, and that is all we are seeking to do. That is why we are resisting this bill, because we think we have a right and the commission will give us the right to do that. If the commission sees fit to do otherwise, then well and good, and these gentlemen have achieved what they want, and have achieved it in a proceeding which they started first before a tribunal which this Congress has created for the purpose of determining such controversies.

It seems to me that it is a very serious proposition, as a matter of legislative policy, for Congress to create an expert, administrative tribunal, to endow it with full powers over the subject matter, and then, when the shipping public or a very small portion of it sees fit to resort to that tribunal to present their grievances to it, after their case has been heard, but before it has been argued and determined, to encourage those same people to rush before a committee of Congress and seek to obtain by legislation what they are seeking to obtain before this tribunal, which has power to pass upon the situation. It seems to me that is a very serious problem in legislative policy. If that sort of thing is to be encouraged, it seems to me you gentlemen must expect that dissatisfied shippers will be rushing in here continually, as they have been inclined to do before some State legislatures.

Mr. RAYBURN. Now, that is a very fair argument, there is no question about that; but here is the proposition: We have created a Supreme Court of the United States, and we have tried to write a law that will mean one thing and the Supreme Court will say it means something else. Do you not think it is fairly competent for Congress to redeclare what they did mean to say in the first instance?

Mr. SCOTT. Unquestionably, Mr. Rayburn, this Congress has the power to set the Supreme Court right upon matters of policy, of law, etc. I do not, of course, dispute that proposition. But let me call your attention to the fact that this differs from the ordinary situation in this respect. You have already endowed this administrative tribunal with full power over the situation, to determine the form and substance of bills of lading. The Supreme Court held that when you entered the domain of regulation of liability on bills

of lading you conferred upon the Federal Government the full power.

Mr. STEVENS of Minnesota. Have we done that? Have we any right to do that? Is it in our power to delegate to the Interstate Commerce Commission the full power you speak of, to determine what ought to be and what ought not to be in bills of lading?

Mr. SCOTT. Of course, as I understand the proposition, so far as it relates to conferring power, you set up standards just as you do in the rate-making power; that is, they must be just and reasonable. The same standard is fixed here in granting them power over the form and substance of bills of lading. I suppose it is elementary that you can not delegate legislative power.

Mr. STEVENS of Minnesota. That is what I have in mind.

The CHAIRMAN. We authorize them to do certain things, but we do not relinquish our power to do them if we want to.

Mr. SCOTT. Yes. My argument was directed to legislative policy and not power.

Mr. STEVENS of Minnesota. I do not know whether you are aware of it or not, but there are now before this committee several bills relative to bills of lading, some of them in relation to the substance of them and some of them are bills which are more or less agreed upon by the shippers, bankers, and railroads. There is legislation pending right now in which the carriers are participating covering somewhat similar propositions, and legislation is also pending in the Senate and House in the antitrust bills correcting a decision of the Supreme Court where the general policy of law, we think—or Congress thinks—I will not say was not accurately but not adequately laid down in the decision of the Supreme Court. Therefore it is our constant duty to do the very thing you are objecting to.

Mr. SCOTT. You entirely misconceive my argument, if you think I deny your power to do these things.

Mr. STEVENS of Minnesota. That is not the point; it is a matter of policy.

The CHAIRMAN. You are unquestionably right to this extent: We have authorized this commission to do these things as a matter of policy because it is easier and more satisfactory to do it in that way. Now, if they have the authority to do it and stand ready to do it and can do it, it looks to me like it would be unnecessary for us to do our work over to that extent.

Mr. SCOTT. That is my argument, Mr. Chairman, and my argument further is that—I say this with deference because I do not mean to be offensive at all, and I recognize the right of this committee and of Congress to legislate on this subject if your wisdom so dictates—but it does seem to me of doubtful legislative wisdom to interfere with this commission in a matter that is now pending before them undetermined, in which this very proposition is urged.

Mr. STEVENS of Minnesota. We have done that, although we have not done it very often.

Mr. SCOTT. Undoubtedly, you have the power, Mr. Stevens. You made reference, I presume, to the pending Pomerene bill with regard to bills of lading. Let me direct your attention to the fact, however, that the Pomerene bill deals with matters of substantive law rather than the form and substance of the bill of lading itself.

Mr. STEVENS of Minnesota. I realize that, of course.

Mr. SCOTT. Now, a good deal was said here——

The CHAIRMAN (interposing). Has not the holding of the Supreme Court left this matter turning entirely on the bill of lading, and if the parties themselves either are unable or are unwilling to sign contracts adverse to their interests, the Interstate Commerce Commission can correct the matter by prescribing a bill of lading for that purpose?

Mr. SCOTT. May I answer your question, Mr. Chairman, by reading from a decision of the Supreme Court in the Carl case, which is one of the series of cases referred to here? There were four cases argued on this proposition, the Croninger case, which is the one usually mentioned because that is the one in which the main opinion was written, which involved a diamond ring shipped by express; the Miller case, involving a stallion declared to be of the value of $100, handled by my company, and for which plaintiff recovered a judgment of $1,200; the Latta case, to which Mr. Wright made reference last week, and the Carl case, involving a shipment of household goods. In shipping household goods, the carriers, as you perhaps know, provide two rates, one where the shipper declares his household goods are of a value of $5 per hundredweight, and a higher rate where he does not make that declaration. The validity of that regulation was before the court in the Carl case. It was argued before the court that that was an unreasonable regulation, and that the rates of insurance were so high as to practically prevent the shipper from taking advantage of the unreleased rate.

Mr. ESCH. Was that the case where the carrier denied that the transfer company had a right to bind it?

Mr. SCOTT. No; I think that was in another case.

Mr. ESCH. The case I refer to went up from Minneapolis.

Mr. SCOTT. The case you have reference to was another case.

In answer to what the chairman said I would like to read briefly from the opinion in the Carl case:

> The difference between two rates upon the same commodity, based upon valuation, is presumably no more than sufficient to protect the carrier against the greater amount of risk he assumes by reason of the difference in value. When the higher rate is no more than to reasonably insure the carrier against the larger responsibility a real choice of rate is offered and the shipper has no reasonable excuse for undervaluation. If the margin between the rates is unreasonably beyond protection against the larger risk the shipper may be induced to misrepresent the value to escape the unreasonably high rate upon the real value. This would result in permitting the shipper to obtain a rate to which he is not entitled, and in the carrier escaping from a portion of its statutory liability. Both the adjustment of rates upon the class of articles based upon difference in valuation, as well as the acceptance of stipulations in the carrier's bill of lading, which affect the liability declared by the Carmack amendment, are administrative duties of the commission. To the extent that such limitations of liability are not forbidden by law, they become, when filed, a part of the rate.

In other words, Mr. Chairman, there is a direct recognition by the Supreme Court itself, in one of these cases, of the very proposition you put to me, namely, if there is any unreasonableness in these contracts or in these rates the shippers can resort to the commission for redress.

The CHAIRMAN. And it is a practice that the commission would order the road to desist from if a proper case were made out.

Mr. SCOTT. Yes.

Mr. RAYBURN. In their opinion.

Mr. SCOTT. And these gentlemen who appeared before you last week can accomplish that in this very case, docket No. 6,766, if they have made out a case which would entitle them to the relief sought, and so far as the unreasonableness of the insurance is concerned, we have conceded that.

Mr. STEVENS of Minnesota. It strikes me that is not the proposition that should be considered by this committee. I was somewhat impressed by the statement made by Mr. Thorne, that it is a fundamental proposition as to whether or not it is good public policy to have set aside a certain group or number of articles or commodities which should be carried at graded rates when most of the traffic is carried at a flat rate.

Mr. SCOTT. Is not that a question, however, that the Interstate Commerce Commission was created to pass upon?

Mr. STEVENS of Minnesota. Oh, yes; as a general proposition; but at the same time, where there is such a tremendously important traffic as that in live stock, might that not be an exception where the Interstate Commerce Commission had pursued a line which the representatives of the people thought would not be a wise public policy?

Mr. SCOTT. I do not understand, Mr. Stevens, that the Interstate Commerce Commission has ever passed specifically upon the wisdom of this proposition until it is called upon to do so in this case here; I mean separating live stock and eliminating live stock from these declared valuations.

Mr. STEVENS of Minnesota. Did they not, some years ago, make an investigation as to live-stock traffic?

Mr. SCOTT. Yes; they have passed upon live-stock rates in numerous cases.

Mr. STEVENS of Minnesota. I understand that; but, more than that, did they not investigate the question of live-stock traffic some several years ago?

Mr. SCOTT. Not the subject of these contracts and these released rates.

Mr. STEVENS of Minnesota. Probably not.

Mr. SCOTT. Of course, they passed on rates on live stock.

The CHAIRMAN. Is not the whole matter of Mr. Stevens's question touching different rates and graded rates covered by the matter of classification, anyhow?

Mr. SCOTT. Certainly.

Mr. RAYBURN. But the question in this bill is not a question of classification; it does not affect classification. It is a question of liability and whether or not it is in the interest of public policy for the railroad company to be allowed to limit their liability by publishing these two rates, one of them amost prohibitive if the man intends to ship on the actual value of the property.

Mr. SCOTT. I am afraid that we overlook sometimes in the discussion the full scope of the bill, because of the natural tendency to limit the discussion to live stock. As Mr. Stevens suggested a moment ago, it is a fair question for argument, it seems to me, before the commission rather than before Congress, as to the wisdom of segregating not live stock alone, because this does not relate to live stock alone, although that is perhaps the principal, or one of the

principal commodities involved; but our western classification makes this same provision for household goods, for jewelry sweepings, for live stock, for ore (and that is a very important item), for officers' effects, for paintings, and then it goes on with another list of invoice valuations to which the same principal applies. Here is the list, but I will not weary you with reading them all. There is a list of 10 or 12 items under invoice valuations found in the western classification all treated in this same way.

Now, I concede it is a fair matter of argument, and we are meeting the argument in this case, 6,766, as to whether live stock should be so treated. If it is so manifest that live stock ought not to be treated in this way, can it not be assumed that this expert tribunal will so find? If it is a question open to argument, should we not be permitted to go before this tribunal, which is regulating us in other respects, and present our argument and let them determine the question?

Mr. ESCH. Why is it that on only some 8 or 10 articles is the shipper allowed an option as to limited liability, or common-law liability, out of the 4,000 articles of commerce?

Mr. SCOTT. Mr. Esch, if you will pardon me, your question assumes a thing that is not quite correct, although I am sure you did not mean it so. Let us bear in mind that when we ship any article, whether there is a declared valuation or not, the shipper has two options. Under the uniform bill of lading, as you know, he has the option to ship at common-law liability and pay 10 per cent more than the regular rate, or he takes the uniform bill of lading and gets the liability there provided, and, of course, gets the rate commonly used. As was stated here last week, the great bulk of commerce moves under that released rate. So that in every shipment we have in a sense a released liability to the extent that the provisions of the uniform bill apply rather than the liability at common law. Beyond that, however, it is true, as you indicate by your question, that there is a limited list of items in the classification which the carriers have found it advisable, or have thought advisable, to apply these released rates to.

Mr. ESCH. That is what I want to know. What is the basis for the selection of the articles to which the released liability attaches?

Mr. SCOTT. You must bear in mind that a great many rates are based upon valuation, without this question of declared valuation entering into it at all. As was pointed out last week with reference to coal, we have one rate on soft-coal screenings, we have another rate on mine-run of coal, we have another rate on nut coal, and a different rate on anthracite coal. Of course we do not require the shipper in those cases to declare the value of the specific ton of coal he is shipping; but we do base our rates upon the value of those commodities, so that the proposition of value enters into the question of rate making.

The CHAIRMAN. In that case the value is a matter of public knowledge.

Mr. SCOTT. Yes; it is a matter of public knowledge. Now we get down to a few classes here, and this list, I may say to you frankly, is smaller than it once was. I will say to you frankly that it is the policy of the carriers to reduce this list as much as possible. It has

been voluntarily reduced. For example, candies have been stricken from the western classification. But, as the chairman suggests, there are items which it is very hard to ascertain the value of.

The ordinary local agent of a railroad company can tell whether a particular coal is hard or soft coal, whether it is mine run, pea, slack, or screenings; but when an animal is brought to him to be shipped, a horse or a steer, he may or may not be able to determine the value of the horse or steer. In this Harriman case, which has been referred to so much, the shipper declared there, using the very expression, "ordinary live stock," which was in the Cummins bill originally and which was stricken from the bill as passed by the Senate. He used that expression. The M., K. & T. tariffs use the expression "ordinary live stock," and the shipper said, "Yes; this is ordinary live stock." When the stock was injured he said, "These were show cattle, thoroughbreds," and instead of being worth $30 or $40 a head, he claimed they were worth $10,000, a great many times this declared value.

The same thing is true of ore. It is not possible for the agent to tell the value of ore or jewelry sweepings or household goods. There are all sorts of varying values on household goods. These items are not only difficult to ascertain the value of, but some of them, and live stock particularly, are very susceptible to damage in transit; and whether it is right or wrong, it does seem to me it is a proposition we should thrash out before the commission rather than before Congress. That, in brief and roughly, I think, is the justification for the segregation of these items; and that, again, I think, is a proposition we should thrash out before the commission. Did you want to suggest something, Senator?

Mr. FAULKNER. You have pretty well explained it. I was going to ask you the question whether, with reference to these few articles that are based upon value in the schedules, the principle upon which they are segregated from the great mass of other traffic is not because of the wide variation in value?

Mr. SCOTT. Perhaps I did not make that as plain as I should have done. There is, of course, a wide variation in the value of ores, household goods, live stock, jewelry sweepings, and the various other commodities mentioned. Mr. Thorne read last week from Mr. Fyfe's statement, and Mr. Fyfe is the chairman of the western classification committee, that it was the intention of the carriers to reduce this list as much as possible; and I know personally that that is the attitude of the carriers. I am frank to say, however, that we think we are justified in urging that it be retained on some of these items like household goods, ore, and live stock, and we would at least like the judgment of the commission upon our contention.

Now, I do not want to weary you at all, but there was perhaps an impression conveyed here last week by some things that were said that it is very difficult for a poor man to get a hearing before the Interstate Commerce Commission, and that it was a great hardship upon the poor man to have to present these questions to the commission, and that is was much easier for him to come to Congress. It is a little difficult for me to take that seriously.

I have cited you four cases now pending before the commission involving this proposition in which these very able attorneys appear for the shippers. Anybody who is at all familiar with the work of the commission knows that they send their examiners to the very

residences of the shippers; that they furnish him with a free copy of the record; that he can go there without an attorney, as we often meet them, and the examiner turns in and helps them, as he may do, and perhaps should properly do, to develop their case. And those who are familiar with the work of the commission feel that the poor man has about the best tribunal there is in the world to air his grievances before in the Interstate Commerce Commission. I do not believe it can be seriously urged that it is difficult for the ordinary man to get these cases before the commission. Of course it is true that in the case Mr. Farrar had reference to, the hoof-weight case, that was a small case in which there was only a little amount of money involved but a big record made; and, as one of the members of the committee pointed out, of course it was a question of precedent, and naturally the thing had to be gone into just as any lawsuit may result in a good deal of litigation and a great deal of expense.

The CHAIRMAN. That is about the only tribunal where you do not have to pay the costs if you happen to lose.

Mr. SCOTT. Yes; that is about the only one I know of.

Some point was made, and it sounds forceful, and I think it impressed some of the members of the committee last week, and it is often urged that these contracts are shoved under the nose of the shipper at the last minute before the train starts and he does not know what is in them, and he does not have any opportunity to read them and does not have a fair show. I have no doubt that has happened.

The CHAIRMAN. Are not almost all of them habitual shippers?

Mr. SCOTT. Well, Mr. Sykes, who appeared before you last week, admitted that he knew all about these contracts, but he is still shipping on the low valuation because he thinks our rates are too high.

The CHAIRMAN. Has not every one of these cases involved the habitual shipper rather than the casual shipper?

Mr. SCOTT. Yes; the Miller case was a case of that kind, and it is pretty generally known now, I think, because I read, as many of you do, the agricultural journals, and they have circulated a knowledge of these cases pretty thoroughly, and the average farmer out in the country is not so slow in these times but that he is about as well posted on these things as any of us. What I wanted to say in that connection was this: Conceding that there may have been individual cases of injustice; and I do not doubt that is true, both the commission and the carriers are working to the correction of that trouble. There was a hearing before the commission about two years ago, known as I. & S. Docket No. 76, which involved the adoption of Western Classification No. 51, which is the general western classification and contained these released rates on certain articles and a rule with reference to the making out of the bill of lading and the declaring of value, etc. Complaint was made by this same Mr. Thorne to the Interstate Commerce Commission in that proceeding about that rule, and the commission said in their opinion, which is to be found in 25 I. C. C. Reports, page 442, referring to the rule with regard to declaring values:

> This rule should be so reconstructed as to place upon the carrier the positive duty to first print these conditions, and not require the shippers to write them,

and, upon the carrier's agent the duty to notify the shipper of the alternative rates and present for his signature the necessary bill of lading to secure the desired rate.

In some of the old contracts the shipper had been required to write in the whole clause declaring the value, but that manifestly was an unfair thing. Pursuant to that opinion the carriers went to work and amended Western Classification 51—I have before me No. 52 which is the later issue—and rule 2 of that classification now reads as follows:

Agents should call shippers' attention to such ratings, and where shippers desire to avail themselves of the lower ratings based on declared or invoice valuations, the following declarations must be inserted in bill of lading by agent and signed by the shipper.

And then it gives the declaration that he must make.

Mr. STEVENS of Minnesota. What is the meaning of that rule—that the basic rate is the high rate and if the minimum rate is to be had the special attention of the shipper must be called to it?

Mr. SCOTT. They are framed in different ways as to some items. For example, I will just read it to you with reference to household goods:

Household goods (consisting of second-hand articles, of household furniture and personal effects only), not for sale or speculation, prepaid.

The value of each article of which is declared by the shipper not to exceed $10 per 100 pounds, or the proportionate amount thereof if weight is less than 100 pounds and so stated on bill of lading.

If he does not declare the value he gets the lower rate. The valuation is $10 in the western classification. It was $5 in the one in use at the time of the Carl case.

Mr. ESCH. That is, per hundredweight?

Mr. SCOTT. Yes.

Mr. STEVENS of Minnesota. The rule you first read seemed to indicate that if the shipper desired to take advantage of the lower rates it must be specially called to his attention.

Mr. SCOTT. Let me read the rule itself, Mr. Stevens, if you will permit me. What I read was the notice that must be inserted.

When invoice value is made a condition of the ratings shown in this classification, the following clause must be entered in full on the shipping order and bill of lading, and signed by the shipper:

"For the purpose of enabling the carrier to apply the lawful rate, as provided in this classification and tariffs, I (we) hereby declare that the invoice value of the property herein described does not exceed the value as stated which the carrier, at its option, will be permitted to verify from (our) records, and I (we) will not present claim for any cause against the carrier on a higher basis than the invoice value."

This rule makes it the absolute duty of the carrier's agent where there is an alternative rate to call the shipper's attention to that alternative rating and then to provide him with the form of declaration which he desires to make.

Mr. WRIGHT. In the hearing on classification No. 51 there was no objection to the alternative rate made. The commission did not consider the propriety of continuing it.

Mr. SCOTT. Not at all. It was merely questioned whether we were fair in our contracts, with the form of contract then submitted, and I call attention to this merely to show that the proposition has been before the commission and they have ruled on it and our classifica-

tions and tariffs have been amended accordingly. I have before me the live-stock contracts of the Colorado & Southern Railroad Co. gotten out after this pronouncement by the commission on the western classification, where they print in red ink directions to the shippers, calling their attention to this matter as follows:

Whereas the shipper has elected to ship the said animals at the rate aforesaid, and in order to secure the benefits thereof, does hereby declare said animals to be of the value as follows, to wit (to be inserted by the shipper).

The places are left blank and he may insert his own valuation and there is this further red-ink notice:

Under no circumstances are railroad agents permitted to sign the shipper's name or insert the value of the animals in this shipment. This must be done by the shipper or his agent.

I do not claim that all railroads are using this form of contract. I simply cite it to you as an illustration of what is being done by the carriers following the commission's pronouncement in Western Classification 51, in this matter of trying to be fair with the shipper in the matter of declaration of values.

Mr. ESCH. Was objection made to the establishment of valuations of household goods on the basis of hundredweight rather than on the basis of price per article?

Mr. SCOTT. That has arisen, Mr. Esch, I think, on some individual claims. There has never been any such complaint filed before the commission to my knowledge. It is true, however, that sometimes an individual shipper who has suffered a loss feels that the claim ought to be adjusted, not on the basis of hundredweight, but on the basis of value per article.

Mr. ESCH. I can see where it would be very difficult for the ordinary man to value goods by hundredweight as against valuation by article.

Mr. SCOTT. As far as my recollection goes it has never been thrashed out before the commission.

Surely the opinion of able and disinterested lawyers on this bill is worthy of consideration. It is discussed at length in the report of the committee on commercial law to be presented at the meeting of the American Bar Association at Washington, October 20–22, 1914. Advance copies of this report are now available and these show that the committee is adverse to the bill. On page 5 it is said:

The committee desires to report that it can not now recommend the passage of Senate bill No. 4522 by the House of Representatives in the present form in which it has come from the Senate.

If you will pardon me just a few minutes longer, I want to direct your attention to what it seems to me will be several effects that will follow the passage of this bill.

In the first place, I want to emphasize the fact that it affects much more than live stock. Our argument has naturally centered around live stock because that has been the only interest represented here proposing this bill; but it affects, as I have said, household goods, ores, and the various other items mentioned in the classification.

In the second place, this bill in the form in which it is now drawn covers foreign commerce. That was mentioned last week and I understood that it was perhaps the thought that that would be restricted

to commerce to an adjacent foreign country; but in the form in which it is now, it certainly extends very much the scope of the control of Congress over commerce to foreign countries and it is not limited to commerce to an adjacent foreign country.

In the third place, I honestly believe, although I may be mistaken about it, that Mr. Lincoln is absolutely right in his contention before you last week that if you pass this bill in the form in which it is now, an automatic advance in the rates will result. I think he made that clear to the committee. The argument is simply that the classification provides two rates, one where you take the uniform bill of lading liability and the other where you take the common-law liability. If you strike down by this bill the uniform bill of lading liability, you leave nothing but the common law liability and the increased rate attaches to it automatically. I think that argument is correct. There can be no doubt that the shippers represented by Mr. Lincoln believe that and in number they far outnumber all other shippers appearing before this committee, because he appears for the Industrial Traffic League and that is a live organization which has always been opposed to us. They were the people who opposed us in the uniform bill of lading hearing, and they evidently and sincerely believe that an automatic advance in rates will result. Of course that could be corrected at any time by the commission, if they felt the advance was unreasonable, but I am speaking of the immediate effect.

Mr. STEVENS of Minnesota. We could correct that in the bill before us.

Mr. SCOTT. Unquestionably you would have the power to do that. Query: Whether Congress wants to undertake to make rates by legislation? That is what it would be. Many of these rates are based upon the theory that they should be graded according to valuation, etc., and if that was attempted to be done at all you would destroy our whole theory, namely, that we are entitled to insurance for the added risk when we assume the common-law liability; and that is a doctrine recognized by the courts from the time of Lord Mansfield. Mr. Thorne made learned reference to Lord Mansfield, but Lord Mansfield, in Gibbons *v.* Painter, laid down the proposition that when there was an increase of risk the carrier was entitled to an increased rate.

Another effect of the passage of this bill is to make it absolutely necessary for the passenger traveling with baggage to declare the value of that baggage. It covers the transportation of property, and certainly baggage is property; and the carrier transports the property, and it is hidden or concealed from view, and under the terms of the act we will have to require from every passenger traveling with baggage a declaration of its value.

Another effect of this bill is its bearing upon section 3 of the uniform bill of lading. Section 3 of the uniform bill of lading provides a method for ascertaining the value of property that is damaged, and it makes the measure of value of that property the invoice price of the property at the time and place of shipment. As you know, there has always been a great deal of dispute in the matter of claims against carriers as to what was the proper measure of value

of property lost or damaged. After very much thought, after long conferences between shippers and carriers, and discussion before the commission, section 3 of the uniform bill of lading was written, which provides that the test of the value of the property is the invoice price at the time and place of shipment. I do not conceive this to be the place to argue the merits or the justice of that test. I do direct your attention to the fact that that test was decided upon and inserted in the bill of lading. In the recent hearing on the uniform bill of lading which I have referred to, docket 4844, there was earnest discussion between the carriers and the shippers as to the wisdom of that test, and Mr. Lincoln, who appeared here last week, opposed the carriers in our contentions on that. We thrashed the whole matter out thoroughly, briefed it and argued it, and the commission has the matter under consideration and it is fair to assume that very soon they will hand down a decision upon that proposition. This bill, however, would predetermine that proposition, a proposition upon which the commission has taken pages and pages of testimony and heard arguments, etc., because this bill forbids our making any provision in the bill of lading with regard to values, and it would wipe out entirely our invoice-value proposition.

Furthermore, the bill with regard to the provisions about notice of claims seems to us to be extremely unfair. It holds out the promise that we may under certain circumstances have notice of claims for loss and damage, but it winds up with this very significant proviso:

> *Provided, however*, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

Our claim men will tell you—one of them will address you presently—that practically the only claims we will have left under that proviso will be claims for loss by theft, because all other claims are due to carelessness or negligence——

The CHAIRMAN. What is the difference between carelessness and negligence?

Mr. SCOTT. I can not define that distinction, Mr. Chairman. I read the language of the bill, "carelessness or negligence." They are ordinarily taken, I believe, to mean the same thing.

The point I want to make is that claims for loss which result from theft are practically the only claims that would be left that we could require notice of. Mr. Wright gave you an illustration last week of the hardship we suffer now, where we do not have notice of claims, and I will not weary you further than to emphasize the fact that it will practically destroy all notice of claims for loss or damage, because the claims for loss by theft represent a relatively small percentage of the total claims.

Further than that, the proviso is ungrammatical, if you will pardon me, because it reads:

> *Provided, however*, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit, etc.

Mr. ESCH. We are not responsible on this side for that language.

Mr. SCOTT. But it is language that ought not to be permitted to stand—if the loss, damage, or injury complained of was damaged in transit.

The CHAIRMAN. If loss and damage is damaged, it is a benefit to the commodity, is it not?

Mr. SCOTT. I presume so. I will leave that to the committee. It should further be noted that the whole question of what is a reasonable time for filing notice of claims is before the commission now in the case referred to, docket No. 4844, the uniform bill of lading investigation.

In conclusion, it does seem to us that when the Interstate Commerce Commission has full jurisdiction of this subject matter, when the shippers have presented their grievances to that commission very fully, and when the commission has those grievances under consideration, and has not made a decision, we are justified in urging that the Congress take no action on this bill at this time.

Mr. STEVENS of Minnesota. Then your contention is that this proviso takes all that class of injuries and damages out of the jurisdiction of section 16 of the interstate commerce law and throws it into the courts in the first instance?

Mr. SCOTT. I do not know that I follow you on that.

Mr. STEVENS of Minnesota. There are certain classes of injuries where the shippers are obliged to go to the commission and get the decision of the commission as a basis for reparation. Do you contend that this proviso changes that provision of law?

Mr. SCOTT. The proviso, of course, has merely to do with the question of notice of claims, and it would simply prohibit us from putting in our bills of lading or live stock contracts any requirement of notice of claims at all. That is the only effect of that proviso, but may I say a word in answer to the suggestion you make? It seems to me Judge Cowan, not purposely, of course, created a somewhat false impression by his argument last week.

Mr. STEVENS of Minnesota. That is what I had in mind. He sought to have the class of cases requiring adjudication by the commission diminished so that he could get into the courts in the first instance without being obliged to await the action of the commission.

Mr. SCOTT. Of course, it is well understood by all of us that it is not necessary for a shipper who has a claim for loss and damage against a railroad to go to the commission with it at all in the ordinary situation. Of course, we all understand that. The resort is to the court, but Judge Cowan's contention, as I understand it, was that where a shipper had made a declared value or released the value under one of these contracts, then he must go to the commission before he could bring his suit in the court to recover more than the declared valuation which he had made. Of course, under our contention, they must go to the commission in order to have these contracts changed or ratified, but when that is done, the commission then has no more to do with loss and damage claims than in the past. I hope that point is entirely clear. It seems to me there was a possible confusion that came from that suggestion of Judge Cowan's. Once the commission has changed the contract then, of course, the procedure in these loss and damage claims is not affected at all.

STATEMENT OF MR. W. S. BATTLE, JR., GENERAL CLAIM AGENT OF THE NORFOLK & WESTERN RAILWAY CO., NORFOLK, VA.

Mr. BATTLE. Mr. Chairman, I am neither a lawyer nor a rate expert, but I want to show you the trouble that this bill will mean in the adjustment of the ordinary and usual freight claims that we have. With reference to the question of limited liability that has been referred to, and with particular regard to live stock and household goods, it has been my experience that the only man who knows about the value of live stock and household goods is the owner or shipper. The agent who handles them and bills them out can know but little about them, and he must accept the statements of the owner as to the value of the goods. With reference to rates, I can say nothing, but regarding the insurance, it was stated here last week that on live stock in the West insurance could be gotten for 50 cents a car to cover the difference between the limited value and the further value. That value was $50 per head, as I recall it——

Mr. STEVENS of Minnesota (interposing). That is to say, if the stock were to average $100 per head, they could take the limited value or minimum value of the schedule and then take out insurance for 50 cents per head.

Mr. BATTLE. Fifty cents per car.

Mr. STEVENS of Minnesota. Yes; for 50 cents per car.

Mr. BATTLE. Yes; for 50 cents per car additional. And the statement was also made that the Burlington was handling 150,000 cars of live stock per annum. Now, at 50 cents per car, that would be about $75,000, and it has been my experience with insurance matters that the insurance company would be subrogated to the rights of the claimant; so that if the insurance company could get back from the railroad company the amount which it paid—that is, the amount that the insurance company paid the claimant, that insurance company would have a cinch. There would be only the cost of writing the insurance, and that is what this bill would do, as I understand it.

Mr. STEVENS of Minnesota. They would not need any insurance at all.

Mr. BATTLE. It would be worth that, 50 cents per car, for the trouble of doing the letter writing and collecting the claim. Now, a statement was made about the shippers in Iowa and their troubles. Down in Virginia probably 75 per cent of the shippers sell their stock to representatives of the packers at certain times in the year, and they are shipped to the markets by the packers. It is done just as in the case of apples and any other articles of that kind—the buyer goes around through the country and buys them up. So this will not help the little man in my section at all.

Mr. ESCH. Where does the title pass, at the shipping point or point of destination?

Mr. BATTLE. At the shipping point, I understand, sir.

I am not qualified to say anything about the Iowa farmer, because I have not had any experience with him, but I am qualified to say that I do not know anybody better qualified to take care of himself than the Virginia farmer and live-stock raiser. They can handle their own affairs and take care of themselves, and we have very

few claims of that character. The Norfolk & Western Railroad runs through the States of Virginia, West Virginia, and Ohio, and branches into North Carolina and Maryland, and we have a little tunnel, I believe, in Kentucky. So that we have both the interstate and intrastate shipments. Now, we have had this situation: We have had in Virginia and in North Carolina a decision by the courts holding the limited liability invalid. The result is that we have paid in some instances as high as $2,000 for a horse shipped on a valuation of $100. In West Virginia and Ohio the courts have held that the limitation of liability is valid. So that in handling these claims, we have had to consider the location of the particular accident or where the contract was made. In other words, on one half of our lines, or about 1,100 miles of the lines in Virginia and North Carolina, there is no limited liability, while on the other half, or about 900 miles, in West Virginia and Ohio, there is limited liability.

Mr. STEVENS of Minnesota. How do the rates compare on the lines where there is limited liability with the rates on lines where there is no limited liability?

Mr. BATTLE. I am not competent to discuss rates. I am brought into this by reason of handling claims and passing upon them.

Now, Mr. Thorne in his arugment here cited the instance of a shipper—I believe he was a man controlling about 200 carloads of stock—who had a claim for damages and the attorney for the shipper thought that about $800 was a fair settlement. The shipper himself took up the claim and conferred with the claim agent and settled it for $1,500. Now, if that claim agent paid and that shipper accepted an excessive valuation, they were simply violating the law. They were law breakers. There is no law that will prevent that. We have laws against murder, but we still have murder. I do not think any proper, law-respecting citizen desires to deliberately put himself in the attitude of being a lawbreaker and being punished, and, if that transaction were known to the courts he would be punished.

Mr. STEVENS of Minnesota. We want to catch him at it.

Mr. BATTLE. I wish you would. All of our offices and regulations are open to the inspection of the Interstate Commerce Commission's accountants. They go through our offices. I think they spent three months with me some time ago checking up all claim payments, because that is one of the few ways left open in which rebating can be accomplished.

Mr. CULLOP. In the case you have just cited, there was collusion between the claim agent of the railroad company and the shipper?

Mr. BATTLE. I should say that both were crooked.

Mr. CULLOP. Is it your experience that you have much of that?

Mr. BATTLE. My experience is that a vast majority of the shippers and claimants are thoroughly and entirely honest. There are some, and they would be considerable in number but small in percentage, who magnify their claims and who present improper claims, and it is the investigation, the tracing and handling of these improper claims, that cause the trouble. In the great majority of cases you can accept the statement of the claimant as to what his damage is or what his loss has been.

Under our bill of lading the value at point and time of origin is the value for which you must pay for loss or damages; that is, it is

based on that value, and the one thing that gives more cause for friction between the railroad company and the claimant is the trading on that question of value. I think that if the bill of lading could do more by fixing value toward eliminating friction and bad feeling—and believe me the railroad companies are trying mighty hard to get along with their people—it would take away one of the very difficult things with which we have to contend.

Now, for the fiscal year ending June 30, 1914, I handled 53,636 freight claims. The average amount per claim was about $10. About 85 per cent of our claims are below $10 in value. The claim account is made up of small matters. It is not made up, as a general thing, of great big claims. I have had claims as low as 3 cents, and I have had them over $100,000. Of that 53,635 claims, 31,800 were paid direct to claimants, and 17.8 per cent were declined or withdrawn. They are handled, from the time they were presented to my company until a conclusion was reached, either by payment or by withdrawal, in an average of 47 days; that is, both for loss and damage, and that record goes for the last few years. Of the 9,554 claims which were declined on account of our feeling that we did not owe the money, suits were brought against us in 61 cases. In other words we had 117 freight claim suits out of over 53,000 claims, and of those 117 suits, 56 were brought without any notice of claim having been filed at all. We have certain sections of the country through which we run where we have had experience with justices of the peace, who seek claimants, get their claims, and bring suits so as to get their fees. We have also had the question—which was referred to here the other day—of certain organizations, calling themselves traffic or audit companies, securing claims from shippers and collecting them, I presume, on a certain percentage of the amount they can collect. We have very little of that on our line, because we want to deal direct with the claimants, and we decline to deal with these audit companies or traffic organizations unless they furnish us with powers of attorney in each instance. I do not think we have had very much of that.

It is our practice in handling claims to handle a claim for anybody whose business touches our line. If we handle a man's business we will take his claim and work it to a conclusion, and it is very essential that we should have some knowledge of the claim within a reasonable time in order to investigate it, so that we may know that the payments which we are going to make are legal and right.

Four months is specified in the bill of lading, and it does seem to me that is absolutely sufficient time for almost anybody to know when he is damaged. The bill of lading and contract which a carrier makes covers several States perhaps—certainly a great distance—and the transaction is not completed at any one point. So a carrier, when it gets notice of a claim, must start at the beginning and trace that claim through, both for its protection and for the protection of the public. Then when there is damage done and an unlimited time is given within which to make claims, whether for negligence or whether not for negligence, the carrier will be absolutely unable to find out anything about it. This bill would not help, in my judgment as a claim man, the honest and usual claimant. It would help, very frequently by delay, the man who desires to make im-

proper claims. I would like to cite you to an instance or two of claims with which we have had experience, and some of which were improper. I mentioned the fact that there is no legal limit to liability in Virginia on horses. I had a horse which was entered as common stock at $100 and shipped to a fair. After he had returned the claim was made that the car in which he was shipped had been roughly handled; that the horse had been damaged; and that his racing days were done. We traded as long as we could on it, and I paid $500 in settlement of the claim for that horse, but the next year he made a better track record than he made the previous year.

The CHAIRMAN. I knew cattle got better after being killed by a railroad, but I did not know it improved them after being damaged.

Mr. BATTLE. I handle such claims, too, and I can guarantee your statement.

The CHAIRMAN. Cattle are like men; after they die they are better, and you hear better reports than before.

Mr. BATTLE. I pay for them on the same basis. Now, here is a claim filed against my company for damage to paper, a carload of paper. The claim was filed for $1,400. They made it inside the law—inside the four months. They said that the car had had bone dust in it and that it had damaged the paper. We had considerable correspondence, but could not arrive at a conclusion, and I sent a representative to Chicago to call upon these people and see it. He found that the majority of it had been disposed of in the ordinary course of business and that the foreman and employees of the claimant had no knowledge of any damage. We got an expert paper man. and we settled that claim for $125. If that had been a few months longer, or maybe a few days in this particular instance, we would have been absolutely helpless; we would not have known what to do or where to go to get information. I had one horse shipped at $100; it was killed and a claim was made for $1,000. We would not pay, and the claimant sued us and got $2,000. That is all a matter of court record. I had one case in which a bill of lading was issued for a car of steel scrap. The waybill was made out, but the car did not turn up. The claim was $826.

We investigated and found it was an entire mistake, that the car had never been loaded with the steel scrap, and the claim was withdrawn. If we had not had a reasonable time to find that out, we would have been absolutely helpless, because we could not have found anybody who knew anything about it. That claim arose, however, because our man had made the mistake of taking the word of one of the employees of the steel company. He simply made a mistake. It was honest and not intentional. I could multiply these illustrations, but I am simply trying to present these claim matters to you gentlemen so that you can see what we are up against. If we have no basis to trade on, we are absolutely helpless. We will find juries in one section of the country who will deal reasonably with us and we will find juries in another section of the country who will give us the limit whenever they get the chance. We stay away from juries whenever we can; we try to agree with our adversaries as quickly as we can in accordance with interstate law and biblical injunctions. I had a carload of household goods out in Ohio for which there was an agreed valuation of $10 per hundredweight.

The CHAIRMAN. I suppose you observe the balance of that scriptural injunction—that when you settle you want to settle while he is in the way.

Mr. BATTLE. Yes, sir; and we want to do it as promptly as possible. The agreed valuation was $10 per hundredweight, and it was ascertained that the actual weight of the shipment was 5,050 pounds. There was a claim made against us for $1,938. When I tell you that the average amount of our claims is less than $10 you can imagine that when a claim as large as that is made it requires considerable investigation. We declined it, and suit was brought against us for $4,000. That claim was settled by the payment of $595.90, which was very nearly the basis of the agreed valuation. In the investigation we found that the claimant had just recently taken advantage of the bankruptcy law, and in itemizing his household and kitchen furniture, for which he asked us to pay $2,000, he had placed it at $200. Now, if we had had no notice of that we would have been absolutely helpless; we would not have known anything about it.

I think I have given you enough instances probably to give you the claim man's point of view with reference to this thing.

Now, there is a provision in this bill which relates to shipments that are boxed or wrapped. It is provided that where a shipment is boxed or wrapped a claimant can declare the value. One of the greatest troubles that we have in damage claims arises from the improper wrapping and boxing of shipments. The safety appliance regulations have proven to be one of the greatest sources of damage to freight in transit. I do not think any one thing has ever done as much damage to freight as the automatic air brake, and another thing is the automatic coupler. In the days when a man had to go between the cars to couple them they had to come back pretty carefully, but now they couple by impact, and they are not especially gentle. The action of the automatic air brake is just as bad——

The CHAIRMAN (interposing). There used to be two rules—one the written law and one the unwritten law. The written law said that they would discharge a brakeman if he went in between the cars instead of using the coupler, and the unwritten law said that they would discharge him if he did not run in and couple the cars with his hands.

Mr. BATTLE. I do not know where your railroad experience has been, but that has not been my experience.

The CHAIRMAN. That was in the old days.

Mr. BATTLE. If you should provide for this change in open shipments, you will have just that much less wrapping and that much less protection of shipments from these usual and ordinary shocks incident to transportation. The air brake is put on a train to protect people and property. If a fellow, while going down through the country, comes onto one of these fine Jersey cows—worth a great deal of money after it is injured—at a road crossing, he has got to put on the air brake, and he is going to do some damage; it may not show up at the time, but he is going to do some damage in the train.

The CHAIRMAN. He will save the cow and ruin the train?

Mr. BATTLE. Yes, sir; at times. That is what the air brake is there for. They have got to do it, and nothing has been found that

will prevent damage from that cause. These automatic appliances for safety have not increased, as a general proposition, the better packing of freight, and to eliminate this question from this bill will mean that there will be so much less packing and just so much more damage, and the railroad companies will have to pay for it, and they can not help it.

I do not know what the last clause of this measure, which was referred to by Mr. Scott, means. It says that they shall be responsible for any damage done in loading and unloading. As a matter of fact, in carload shipments the loading and unloading is done entirely by the owner. It is loaded at the point of shipment by the consignor and unloaded by the consignee. There are very few exceptions in which carload business is loaded by the carrier. The agent of the railroad company rarely ever sees it. The car comes in, and it is sent to this man's warehouse, and he unloads it, and unless we get notice at the time we have no means of knowing, and we will never know when the damage was done or how it was done until we are sued. And we could not know, because, as I say, the carrier rarely loads or unloads carload shipments; yet under this last proviso we would have to pay, and we would have no notice of it.

The CHAIRMAN. You would have to keep a standing witness around there.

Mr. BATTLE. But they are mighty hard to get, sir. I understand there is a different rate that applies for legal services out in Kentucky, based on whether the lawyer furnishes the witnesses or whether he does not.

The CHAIRMAN. The Member from Kentucky is not present this morning, and I reserve for him the right to reply to that.

Mr. BATTLE. That is the reason I selected Kentucky. I think I have stated about all I can state from the claim man's point of view. I shall be glad to answer any questions.

Mr. ESCH. You do not keep a record of injuries to live stock?

Mr. BATTLE. What do you mean exactly?

Mr. ESCH. Well, for instance, you have shipped during the last years so mony carloads of stock.

Mr. BATTLE. Yes; about 8,000 or 9,000.

Mr. ESCH. To how many carloads during that year were there accidents?

Mr. BATTLE. I could not answer; I could find out and tell you.

Mr. ESCH. I was trying to get at the proportion of loss to live stock.

Mr. BATTLE. I can tell you that, so far as our line is concerned, speaking roughly, we get about $2.50 a ton on live stock, and I made some figures about that the other day. I see that some lines have put their loss and damage on live stock very high. We handled about 82,200 tons of live stock, and, approximately, our revenue from that would be $2.50 per ton, which would be something over $206,000 of revenue; we paid on that $206,000 of revenue for those 82,200 tons of live stock $5,440 in claims, about 2.6 per cent of our revenue. That is very high as compared with our general payments. The percentage of our revenue that goes back in claim payments is about one-half of 1 per cent, which is a very low ratio.

Mr. ESCH. Are your stock shipments long hauls or short hauls?

Mr. BATTLE. They are pretty long hauls. I say long hauls because we have a road of 2,000 miles, and they come up from the southwestern section of the country; that is, the stuff that goes to New York and that market, and they will probably go 300 or 400 miles on our lines. We do not have very much trouble. With the exception of several of our biggest stock raisers—one of whom is the governor of Virginia—most of our people sell to the representatives of the packers who come around and buy up their stock. I think that is true of 75 per cent of the business. There are some stockmen here who can tell you exactly about that better than I can.

Mr. WRIGHT. On the western roads it varies from about 2½ per cent of the revenue from live stock up to and exceeding 7 per cent. Very little of that occurs because of the absolute wrecking of a car, and less than 15 per cent is due to the actual damage or injury to the live stock; it is due largely to delay and the resultant loss of market. The amount of damage to live stock is not generally a carload, but it is due to the injury or killing of one or two animals in a car. That is the situation as it exists on the western roads.

Mr. BATTLE. That is exactly my experience.

Mr. WRIGHT. On our line we have not had a carload of live stock entirely destroyed for several years. Some of them are hauled for 1,100 miles or 1,200 miles, and the damage does not occur to a carload of animals but to one or two animals killed or injured in a car. That is the way the claims arise.

I would like to call attention to the fact that this provision prevents our making this valuation on less than carload shipments. Mr. Cowan and the other parties spoke of the carload as the only movement and as the one that is most used, but there is a large movement of live stock in less than carload lots, mainly, however, in fancy stock, but this bill would prevent our fixing any classification or value upon such shipments.

Mr. ESCH. You think the experience of the Chicago & North Western Railway Co. is practically the same as the other railroad companies?

Mr. WRIGHT. Yes; practically the same. The testimony shows that their rates are not considerably higher. Ours run between 4 and 5 per cent, but because of the increased value in live stock and the fact that it has gone up now from 8 to 11 cents per pound we handle it with the greatest possible speed so as not to get the shrinkage and loss of market. We have found it necessary to use the greatest expedition in handling our live stock. We handle in Chicago sometimes as many as 40 and 50 trains of live stock in a day.

Mr. ESCH. That would result in fewer violations of the 28-hour law?

Mr. WRIGHT. Yes; in order to meet that 28-hour law we have had to establish different feeding stations. The construction of the department was that that law did not apply to the feed and water car, which we used, but the courts have now decided that unless there is ample room for rest in those cars we must take them out. That resulted in requiring us to establish more feed and water stations and made it necessary for us to readjust our service either by checking it up in the way of speed or making additional stops.

Mr. ESCH. At such stations, does the train crew unload and reload?

Mr. WRIGHT. At the station they usually unload and reload, and the shipper nearly always accompanies the shipment. When a man

ships one car he is given free transportation to the point of destination, and if he ships two cars he is given transportation going and returning, and he is there to look after things. Now, they know, in the case of live stock, better than anybody else, the injuries which are done to them and know it at the time, because they go right along with their shipments.

Mr. BATTLE. These live-stock points on Mr. Wright's road, I presume, are like ours. There are certain points which they try to make within the run, and at those points there is a force which unloads, feeds, and takes care of the stock in connection with the representatives of the shippers. We have more trouble in my section with the range ponies and horses that come in from the West than we do with our live stock; I mean by that our beef stock. They bring into that country a carload of ponies—range stock they call them——

The CHAIRMAN (interposing). I thought they were the liveliest stock in the world, the Texas ponies?

Mr. BATTLE. There is no doubt about their being exceeding lively. I saw a car the other day that looked as though it had been through the Mexican war. They come in from the West and are put up at auction. A man will go around and say, "I would like to buy that horse." They rope him and they sell him at auction. It is a very interesting procedure. I have had claims on that stock anywhere from $50 to $300, although it is very often brought in just to see how much you can get out of it. Are there any further questions?

Mr. SCOTT. May I just supplement what Mr. Battle and Mr. Wright have said? In claim I. & S. 409, a proceeding which is now before the commission, it was shown that with the western live-stock carriers' rates the average claims paid to revenue earned on live stock was between 4 and 5 per cent. It was also shown by detailed figures, which are to be found in that record, that those roads paid for claims, per dollar earned, 250 per cent more on live stock than on the general run of freight claims. Those figures are all worked out in detail, and I merely cite them to you so that you may know they are on record. On my own road, the Burlington, we pay 3.4 per cent of our live-stock revenue in claims for loss and damaged live stock.

The CHAIRMAN. Mr. Wright, you stated that if a man shipped one carload you carried him free to the place of destination, and that if he shipped two carloads you carried him free to the place of destination and back again?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You carried him free for the round trip?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Has that been decided by the Interstate Commerce Commission?

Mr. WRIGHT. I do not know that that has been decided upon by the Interstate Commerce Commission.

The CHAIRMAN. Is that on file?

Mr. WRIGHT. Yes.

The CHAIRMAN. Is it based on the principle that if he has two cars he is worth carrying back in order to get more, and that if he only has one car it is better to leave him where he is?

Mr. WRIGHT. Perhaps that might be the principle. However, some of the States have by legislative enactment compelled us to do that.

I have in mind the fact that Nebraska has a legislative enactment requiring us to do that.

The CHAIRMAN. Compelling you to carry a shipper both ways?

Mr. WRIGHT. Yes. The provision is that there be so many men to so many cars, and they have, in fact, required us to put on extra coaches and have prescribed how we shall fit them up in order to take care of these live-stock men.

The CHAIRMAN. The theory being that the shipper will help you to some extent in the transportation of the live stock?

Mr. WRIGHT. That is the theory of it. At common law we are not carriers of live stock, as was held in the Michigan case, to which reference was made, and the right to limit liability has been recognized in some of the States in relation to the shipment of live stock, because of the different character of the various shipments, upon the ground that the live-stock shipper has an agent with the shipment.

The CHAIRMAN. A provision was put in the law of 1906 that if a shipper helped the carrier he was entitled to some consideration for it?

Mr. WRIGHT. Yes, sir; that is the theory upon which it is done, or that is supposed to be the theory. And we make him responsible to see to the proper feeding and watering and care of the animals en route. He must travel upon that train; he can not travel upon a passenger train; he must travel with the stock for that purpose. However, I am sorry to say that some of them do not render very much assistance, but it is upon that theory.

Mr. BATTLE. I desire to insert the following statement in the record:

Statement showing suits brought against the Norfolk & Western Railway Co. in connection with freight shipments from July 1, 1913, to June 30, 1914.

Total number of suits filed against Norfolk & Western Railway Co. during the above period on freight shipments	117
Total amount of the 117 suits	$17,432.14
Total number of suits for which no claim filed	56
Total number of suits for which claim filed	61
Total amount of the 61 claims	$11,950,32

Disposition of the suits.

Suits for which verdict rendered in favor of the plaintiff	29
Amount of these 29 suits	$4,532.42
Suits for which verdict rendered in favor of the defendant	11
Amount of these 11 suits	$220.29
Suits compromised	50
Amount of these 50 suits paid in compromise	$2,040.63
Suits withdrawn	5
Amount of these 5 suits	$275.89
Suits outstanding	22
Amount of these 22 suits	$30,362.91
Number of suits tried before justice of the peace not appealed	67
Number of suits won by plaintiff	56
Amount of these 56 suits	$820.97
Number of suits won by defendant	11
Amount of these 11 suits	$220.29
Average amount of suits before justice of the peace	$15.67
General average amount of the 117 suits	$148.98
Total claims filed	53,636
Declined and withdrawn	9,554
Average time for payment (days)	47

STATEMENT OF MR. BENJAMIN WILSON, GENERAL LIVE STOCK AGENT BALTIMORE & OHIO RAILROAD CO., BALTIMORE, MD.

Mr. WILSON. Mr. Chairman and gentlemen of the committee, the handling of live stock from the carrier's point of view is different from the handling of any other freight. As we all know, the animals are not accustomed to the noises incidental to transportation, and suffer a great deal from excitement and fear while in transit. Under the most favorable conditions the carriers assume a great risk, and for that reason should have some protection as to their liability. With this in view, I do not think it would be fair or just that the carriers should be forced to transport the animals at full valuation without allowing them due compensation for the risk. All rates are more or less based on the value of the commodity carried, the density of loading, risk of carriage, equipment necessary, and the nature of the movement furnished.

A train of live stock out of Chicago—40 cars—is run to New York. We can not load back 2 per cent of those cars with any commodity for the simple reason that we have no live stock moving back from the East to the West. We can not load the cars with coal for the reason that the coal people want cars with dump bottoms; and coke the same way; and iron ore the same way. Therefore the equipment is special equipment, and we have to haul back empty those live-stock trains in which we transport the animals to the east, which, as we all know, is expensive.

Mr. ESCH. Many of the roads use the live-stock cars for the shipment of ties, rails, and other railroad supplies.

Mr. WILSON. We generally use our live-stock cars for handling ties during the spring of the year when we have very little live stock and when we have more empty live-stock cars than at any other time. I do not know that we use any of our cars for rails. I do not think our cars are so equipped. They have to have a trap bottom door which can be raised in order to shove the rails in.

During the past seven years the value of live stock has increased fully 100 per cent, whereas there has been no advance whatever in the rates for transportation of live stock.

I have here a list showing the values from the Daily Trade Bulletin, July 17, 1914. In 1904 cattle were worth $40.50 a head; in 1906, $49.16 a head; and in 1913, $83.09 a head. Cattle are now worth, the best of them, $140 a head, based on the quotations in Chicago on Monday, at 11 cents a pound. This is the best cattle, of course—corn-fed cattle, weighing 1,400 to 1,500 pounds.

Under provisions of the uniform live-stock contract shippers agree to certain values as declared in the contract. If a shipper desires not to declare the value of his stock and demands carrier's bill of lading, making the carrier responsible for proven value of stock, he can have it by paying a 10 per cent higher rate than that named in the released contract which specifies certain values. This increase of 10 per cent is not as high a charge as is charged by the Hartford Insurance Co., which is now operating in the West.

I have here a copy of a circular issued by the Hartford Insurance Co. showing their rates on different animals for specified miles. Take, for instance, cattle—100 to 300 miles, 10 cents a head; hogs, 8

cents a head; sheep, 4 cents a head; and calves, 10 cents a head. Those are the rates. They run this scale up to 1,200 miles.

You will note the insurance rates increase very materially above a certain weight, which shows that the risk becomes greater.

This company—the Hartford Insurance Co.—will insure cattle at a weight of 25,500 pounds per car at 10 cents a head for 100 to 300 miles. If the animals exceed that weight they charge 10 per cent higher; that is because the greater danger is in overloading, overcrowding the stock, and not giving them room. When their limitation of 31,000 pounds is loaded they make the rate 100 per cent higher.

My observation is that a great many of the claims for losses sustained by shippers are due to overcrowding and overloading their live stock. As an illustration: A certain shipper in Virginia loaded 202 hogs into a double-deck stock car, 101 hogs on each deck. The weight of the shipment was 31,400 pounds, or 9,400 pounds above the minimum weight prescribed in the classification and the rate sheets, namely, 22,000 pounds. That is our minimum. The insurance company would have charged him 100 per cent higher rate of insurance for 31,000 pounds, their minimum being 26,500 pounds per car on hogs, double deck. From my viewpoint, the shipper used very poor judgment, for he should have known that 101 hogs weighing an average of 150 pounds each would be very much crowded in one deck of a car 36 feet long and 8 feet wide, which are the dimensions of a standard car, equal to 288 square feet floor space. As a hog weighing 150 pounds would require at least 4 square feet of space in which to lie down, 72 hogs would have been a full load for a single deck, and 144 hogs would have been a full load for a double deck. In the case in question the shipper had two dead hogs upon arrival at Baltimore. The two dead hogs weighed 400 pounds, which, at 10 cents per pound, made a loss of $40 to the shipper.

The shipment was made under released contract and the carrier will fight any claim for an amount greater than that named in the contract. Furthermore, I do not think the carrier should entertain a claim where the shipper showed so little regard for his own pecuniary interest and such a lack of humanity for his animals. No doubt these animals died from overcrowding and heat. The shipment was made on the 20th of this month, September. In this connection, take a shipment of hogs moving out of Cincinnati on the 25th day of December, with the thermometer at Cincinnati 28°. The hogs leave Cincinnati at 1 o'clock in the day. They are not overloaded in weight or as to number. The shipment comes to Belpre, the feeding point, and the hogs are unloaded and fed and watered, according to the Government regulations, and lie there five hours. They are reloaded into the cars. It commences to turn very cold, bitterly cold, and by the time the shipment reaches the top of the Allegheny Mountains, a distance of 150 miles from Belpre, the thermometer registers 10° above and the wind is blowing a perfect gale from the north. Naturally the animals try to keep warm. They pile up on each other, as we all know hogs will do when they get cold, and when they get to destination five or six of them are dead from being overcrowded. Still, under this bill of Mr. Cummins, as I understand it, the railroad company would have to pay the full value of those hogs at Cincin-

nati, twice as much or three times as much as the freight revenue we received for handling them.

With these facts before this committee, I do not believe any changes will be made toward eliminating the liability clause in the present contract, thereby increasing the carrier's liability in the handling of live stock. The character of the traffic is such that it would be absolutely unfair to the carriers to allow the shippers to overload their stock, putting some weak animals among a lot of stronger ones, and when the shipment reaches destination the weaker animals have been overcome by the stronger animals, and are dead, crippled or badly bruised, and are practically worthless, as they will not pass Government inspection either before or after they are slaughtered.

I will give you another illustration of a shipment of bulls, say, moving out of Chicago and going to Baltimore or New York. The shipper there buys the bulls in the Chicago market, and puts 20 or 21 of them in a car. The bulls have never been accustomed to each other and they fight like bulldogs from the time they get in the car until they get off, and sometimes they kill themselves. I do not think the railroad company should be liable for that. Some of the shippers will not even take the precaution of tying the animals in order to protect their property. They say, "Let them fight it out and we will take our chances of making a claim against the railroad company for them."

I do not think I have anything more to say, but I shall be glad to answer any questions which you gentlemen desire to ask.

We have a stipulation, however, in our rules and regulations—I do not know whether it does much good—in which we say:

> When loading lambs, 240 head to a double-deck car and 120 head to a single-deck car will be considered a full load. Cars loaded in excess of this number will be considered overloaded, and must only be accepted as "overcrowded" shipments, and shippers so advised. When cars are overcrowded, notation to this effect must be made on live-stock contracts and revenue waybills.

I think the Norfolk & Western have a similar rule, allowing probably a little bit higher limit than ours, or 260 lambs to the car. We had a shipment last week moving over the Norfolk & Western from a town called Oakvale. There were 305 sheep in that shipment, and when taken out at Baltimore there were 5 dead and 1 crippled. That is the way they handle the business. Although the agent at the point of shipment, at Oakvale, had from his company instructions to accept as "overloaded" when more than 260 are shipped in a car, what could he do? All he could do was to call the shipper's attention to it. This shows how little regard the shipper has for his property and for getting along without any controversy with the railroad company. I am glad to say that they do not get as much out of the railroad company as they sometimes try to get.

STATEMENT OF MR. J. J. HOOPER, FREIGHT CLAIM AGENT SOUTHERN RAILROAD, WASHINGTON, D. C.

Mr. HOOPER. Mr. Chairman and gentlemen of the committee, as Mr. Battle has disclaimed being a lawyer or the son of a lawyer, I will also have to do likewise; and I am afraid, not being one, that I may bore you gentlemen, especially as what I will have to say may

be, to a degree, a repetition of what Mr. Scott has so forcibly presented; but it seems to me that in the discussion the thought prevails that carriers do not pay their claims promptly and the disbursements do not run into large sums. A second thought occurs to me, that the most essential thing in the transportation business, in my judgment—and I have been in it 25 years, right in the heat of it—is uniformity of practice. I think that necessary uniformity is about to be consummated through the medium of the Freight Claim Association, Mr. Chairman, working in connection with the Interstate Commerce Commission.

Mr. FAULKNER. What connection have you with that association?

Mr. HOOPER. I am, of course, a member of it. I am chairman of the appeal committee, which is the supreme court of our organization, and I am on several other important committees, one dealing with the Interstate Commerce Commission. If you will pardon me, I would like to read——

Mr. STEVENS of Minnesota (interposing). Tell us what you are trying to do.

Mr. HOOPER. I want to get to the paramount necessity of uniformity in freight claim matters, and respectfully suggest that the commission be allowed to deal with these subjects after a systematic canvass. The object of the association, as stated in the constitution, is:

> Its object shall be the prompt and proper settlement of freight claims with claimants and between carriers; also the study of claim causes and application of preventive remedies.

The association contains a membership of practically all lines in the United States, Canada, and Mexico. To get to the point, the commission made a statement that I should be glad to read into the record, if satisfactory. This is the twenty-seventh annual report of the Interstate Commerce Commission, dated December 15, 1913:

> The general question of freight claims was briefly mentioned in our twenty-fifth annual report, and little need be added, except to state that the commission during the past year has been in further conference with the carriers represented by the Freight Claim Assocation with the purpose of bringing about an improvement in the methods and procedure of carriers for investigating and settling claims. As previously stated, the rules now in effect were formulated primarily to provide a basis for the settlement of claims as between the carriers themselves; but, as they have no binding force and the association is without power to enforce their application, there has been reason to think that the rules are not so beneficial as they might be. In the belief that some uniformity in the carrier's methods and rules of procedure in handling claims would be of value, not only to carriers but to shippers, and would give the commission a wider assurance of the correct application of the law in the adjustment of claims, the commission has asked and received the cordial cooperation of the Freight Claim Association. Much consideration has also been given to the principles underlying the rules with a view to determining how far, if at all, they may be inconsistent with the act to regulate commerce. It is hoped that the final results of our joint deliberations will be a set of rules and forms for the investigation and settlement of claims in harmony with the requirements of the act, and which will result not only in a more prompt settling of the claims of shippers against carriers, but in minimizing improper payments to shippers through claim channels.

Now, Mr. Chairman, the figures of carriers reporting to the Interstate Commerce Commission for the year ending 1913 exhibit expenditures in liquidating claims for loss and damage to freight amounting to the tremendous total of more than $30,000,000; while

the earnings of the same carriers increased 110 per cent over the year 1900, the ratio of increase in payments was 338 per cent.

On the subject of live stock the gentleman asked about the ratio of loss and damage to gross earnings. The loss-and-damage account of the Southern Railway Co.—we handle, by the way, 300,000 new claims a year—is about 2 and a fraction per cent of our gross earnings. On live stock the percentage to gross earnings is more than 10 cents on the dollar.

Mr. STEVENS of Minnesota. Ten per cent?

Mr. HOOPER. Yes, sir.

Mr. ESCH. And you have long hauls?

Mr. HOOPER. Yes, sir. As Mr. Battle said, we handle not only the Texas cattle, but the range cattle from Florida, which is a new movement that has to be dipped several times under Government auspices. The company I represent hauls almost every character of live stock—good beef cattle to eastern markets, and others that are inherently poor stock, on which many claims arise——

The CHAIRMAN (interposing). I am afraid I did not understand what you said about the 10 per cent. What was that?

Mr. HOOPER. That the Southern Railway Co. paid out 2 and a fraction per cent of its gross earnings on general loss and damage, but the payment on account of live stock was in the ratio of over 10 per cent.

The CHAIRMAN. Ten per cent of what?

Mr. HOOPER. The gross earnings.

The CHAIRMAN. Of the road?

Mr. HOOPER. Ten per cent of the gross revenue from live stock.

I was about to say, as you gentlemen know, the two merchandise bills of lading are about to be merged. A great many hearings have been had before the commission, and I understand that will be very shortly consummated. I attended some of the hearings, and my further understanding is that each document, each bill of lading, will be taken up and put to the test, including, of course, live-stock contracts.

I might say that one of our colleagues was on the stand before a Senate committee a year or so ago, and the statement was made by him that the shippers did not file their claims in proper shape, and he was asked if the association had ever put out a form of that kind. So that is part of the work that has been done by carriers and the commission. A form was issued for the presentation of claims, approved by the Interstate Commerce Commission, the National Industrial Traffic League, the National Association of Railroad Commissioners, and the Freight Claims Association.

As Mr. Battle has so well said, notice of these claims is needed very badly; that is, notice of loss or damage. I will give you one instance where a lot of feathers were alleged to be lost, known as a concealed loss. A claim was put in in good faith for $40 or $50, but promptly, fortunately for us. We investigated it and saw that there had been no opportunity for mishap and told the gentleman that we thought he should withdraw it. He turned it over to the shipper, who was an equally responsible man. The shipper pressed it. All this time there were affidavits on both sides that the shipment had been made, and that the article had not been received, made in good faith, but not conclusive to my mind. Just as I was

on the verge of paying it, and there are hundreds of cases like that, we sent a man down in that country and he found the feathers on a shelf. The point is there, if we had had no notice of that we would never have discovered it and the claim would have been paid. This illustration could be indefinitely multiplied.

Mr. ESCH. How could a bill of lading have been made out unless the agent knew of it?

Mr. HOOPER. It was a wrapped box, concealed from view.

(Thereupon the committee took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

The committee resumed its session.

STATEMENT OF MR. J. J. HOOPER—Continued.

Mr. STEVENS of Minnesota. You may proceed, Mr. Hooper.

Mr. HOOPER. Mr. Chairman, I desire to speak very briefly on the question of declared values, or limitations, falsely so called. In the southern classifications there are about 15 items. I do not pretend that this statement of those items is absolutely accurrate, because in some of the commodity tariffs I am under the impression the same declared values prevail. I will just read this statement, as it is very brief:

Southern classification No. 40, effective April 20, 1914.

	Class.
Bags, traveling:	
Containing merchandise agreed to be of value of $5 per 100 pounds or less, packed in boxes	1
Containing merchandise in boxes	D–1
Confectionery:	
Agreed to be of value of more than 6 cents per pound, but not exceeding 12 cents per pound, L. C. L.	3
Same, to be of value of 6 cents per pound or less	4
N. o. s., packed	1
Cotton, regins or linters:	
In bales, compressed, agreed to be of value of 2 cents per pound	6
N. o. s.	Cotton rates.
Household goods:	
L. C. L., agreed to be of value of $10 or less per 100 pounds	2
L. C. L., n. o. s.	1½
C. L., agreed to be of value of $10 per 100 pounds or less	6
Carload, n. o. s.	3
Live animals (other than those named under "Live stock"):	
Birds and reptiles, C. L. valuation not to exceed $500 per carload—Double the highest C. L. rate on live stock between same points.	
Live stock, declared value:	
Jacks and stallions, each	$150.00
Horses and mules, each	100.00
Mare and colt together	100.00
Yearling colt	50.00
Cow and calf together	35.00
Domestic horned animals, each	30.00
Yearling cattle, each	15.00
Calves, hogs, sheep, or goats, each	5.00
Chickens, ducks, and guinea fowls, per dozen	2.50
Geese, per dozen	3.50
Turkeys, per dozen	5.00
For every increase of 100 per cent or fraction thereof in the declared value there shall be an increase of 20 per cent in rate.	

	Class.
Monuments, metal:	
Packed, agreed to be of value of $300 or less	1
Value over $300: Taken only by special contract.	
Ore:	
Gold, in barrels, agreed to be of value of $20 or less per ton, L. C. L.	5
Lead, agreed to be of value of $20 or less per ton	5
Mica, agreed to be of value of $50 or less per ton	4
Silver, agreed to be of value of $20 or less per ton, L. C. L	5
Tin, agreed to be of value of $20 or less per ton, L. C. L	5
Paintings, pictures, and chromos:	
Valuation over $50 and not over $200 per box	3/1
Valuation $50 per box or less	1
Valuation over $200 per box taken only by special contract.	
Peaches, powdered (tobacco flavoring):	
Packed, agreed to be of value of 15 cents per pound or less	3
Sand monazite:	
Agreed to be of value of more than $20 per ton	2
Agreed to be of value of $20 per ton or less	4
Silk, raw, or silk yarn:	
Value greater than $1 per pound and less than $5 per pound, in bales or boxes	3/1
Agreed to be of value of $1 per pound or less	1½
Value not specified, in bales, bags, or boxes: Taken only by special contract.	
Soap:	
In boxes or barrels, agreed to be of value of 5 cents per pound	6
N. o. s., in barrels or boxes (not in glass or earthenware)	3
Trunks:	
Containing personal effects wrapped or packed, agreed to be of value of $5 or less per 100 pounds	1
Containing personal effects wrapped or packed, n. o. s	D/1
Watches:	
Clock (not jeweled), other than gold or silver or gold or silver plated, agreed to be of value of 60 cents or less each, in boxes; same agreed to be of value of more than 60 cents each but not exceeding $1 each, in boxes	3/1
N. o. s.: Not taken.	
Boxes must be metal strapped and sealed, and no package weighing less than 50 pounds will be accepted.	

Mr. Chairman, in regard to declared values, I would like to say that the officers of the various railroads conferred years ago with respect to these declared values and the so-called limitations in the bills of lading, and thought that in some cases it was absolutely essential to ascertain the average value of the article for shipment and have a scale of rates or an increase in rates according to the value. At that time the Agricultural Department's records on live stock were searched for a period of 30 years and it was ascertained that the average value of a domestic cow had not exceeded $30, and as for horses and mules—and the period covered the British-Boer War, when the prices went up very rapidly—the average value had not exceeded $100. It is believed now after all of these hearings that perhaps the values ought to be raised, and there may be some injustice in the scale grading the values, but, as Mark Twain said of classical music, it is not as bad as it sounds, then.

I would like to read from the testimony of Mr. Clifton, of the Southern Railway, on the live-stock proposition, at page 20, hearing before a subcommittee of the Committee on Interstate Commerce of the United States Senate, and I think this will answer the question which Mr. Esch asked this morning and which nobody answered:

To illustrate, the established rate on horses and mules, carload, value declared not to exceed $100 each, from Cincinnati, Ohio, to Atlanta, Ga., 474

miles, is $95 per car. Assuming that the average carload is 25 head, the carriers' liability would be limited, under the $95 rate, to $2,500 per car. If the shipper should elect to value the same stock at $150, or even $200, per head, the carriers' liability would be increased, in the first instance, $1,250, and in the second instance $2,500 per car, but the shipper would only pay in either case a 20 per cent increase in freight, or $19 additional on the car. He may value the carload at $7,500 per car, and the added charge would only be $38.

To state the matter in another way, in the case of an increased valuation of $2,500 per car and an additional freight charge based upon that increase of $19, and in the case of an increased valuation of $5,000 per car and an increased freight charge of $38 per car, the added freight charge amounts to only seventy-six hundredths of 1 per cent of the increased valuation.

Unless you desire to ask some questions, I have nothing more to say.

STATEMENT OF HON. CHARLES J. FAULKNER, KELLOGG BUILDING, WASHINGTON, D. C.

Mr. FAULKNER. Mr. Chairman and gentlemen, you have all seen and heard me so frequently before this committee that I feel perhaps I ought to apologize, after the very able presentation of the railroad side by the witnesses who have preceded me, but there are a few suggestions that I desire to make that have not been presented, which should be in the record, as I anticipate that you will not give us a further hearing.

In the first place, Mr. Chairman, I desire to say that we had a most interesting, but not as full a hearing on this bill in the Senate, on a similar bill to this.

The CHAIRMAN. Then we misunderstood you, Senator. We thought you had not had a hearing over there.

Mr. FAULKNER. Yes; if you will permit me, you will see what occurred afterwards. After that hearing had been had, and the subcommittee, composed of three Senators from the Committee on Interstate Commerce of the Senate, under the advice, I think, and certainly after the hearing given by the gentleman, to the Interstate Commerce Commission, there was added to this bill a number of amendments, and those amendments were concurred in by the full committee of the Senate on Interstate Commerce and ordered to be reported. The bill as so amended was reported to the Senate. For reasons which it is not necessary for me to go into now before this committee, the chairman of the subcommittee was absent, being unwell, and one of the members of the subcommittee took charge of the bill in order to pass it in the morning hour, and in passing the bill without much discussion, the number of the amendments that had been reported were given away, I think, in order to get it through in the morning hour.

The CHAIRMAN. If the bill had been adopted by them as recommended to the committee, would that have been satisfactory to you?

Mr. FAULKNER. No, sir; it would not. There are some errors, even in that bill, which you will see just as soon as I call your attention to them. The bill, as recommended by the committee, I desire to file as a part of my statement, and I will ask that in printing it the italics, as shown in the committee report, shall also be shown in the bill as printed as a part of my remarks, as the italics are the amendments of the committee.

[S. 4522, Sixty-third Congress, second session. Report No. 407. Omit the part in brackets and insert the part printed in italic.]

A BILL To amend an act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of section seven of an act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, as reads as follows, to wit:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or a bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law," be, and the same is hereby, amended so as to read as follows, to wit:

"That any common carrier, railroad, or transportation company receiving property for transmission from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carier, railroad, or transportation company so receiving property for transportation from a point in one State, *Territory, or the District of Columbia* to a point in another State *or Territory, or from a point in a State or Territory to a point in the District of Columbia, or for transportatin wholly within a Territory*, shall be liable to the lawful holder of said receipt or bill of lading for the full [actual value of such property] *actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass*, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void: *Provided, however* [That if the property so offered and received for transportation], *That, except as to ordinary live stock, if such property so offered and received for transportation* is hidden from view by wrapping, boxing, or [otherwise] *by other means, or if express authorization has been heretofore granted or shall be hereafter granted by the Interstate Commerce Commission for the establishment and maintenance of rates for the transportation thereof dependent upon the value of the property shipped, as stated in writing by the consignor and reference given in the rate schedule to such authorization*, then the rule of the common law shall apply thereto in so far as the limitation of the recovery to the value stated in writing by the consignor is concerned, and in such cases a tariff filed with the Interstate Commerce Commission may lawfully prescribe rates varying with values as so stated: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law."

Sec. 2. That this act shall take effect and be in force from ninety days after its passage.

Mr. RAYBURN. Have you any objection to incorporating the report accompanying that bill?

Mr. FAULKNER. None in the world. I will also offer, at the suggestion of Mr. Rayburn—which I think, perhaps, is a very wise suggestion—the report of the committee to the Senate, which will also be added as a part of my remarks.

(The report is as follows:)

[Senate Report No. 407, Sixty-third Congress, second session.]

The Committee on Interstate Commerce, having had under consideration the bill (S. 4522) to amend an act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, beg to report the same back with the following amendments:

On page 3, line 4, after the word "State," first occurrence, insert "Territory or the District of Columbia."

In the same line, after the word "State," second occurrence, insert "or Territory or from a point in a State or Territory, to a point in the District of Columbia, or for transportation wholly within a Territory."

On page 3, line 6, strike out the words "actual value of such property" and insert in lieu thereof "actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass."

On page 3, line 13, after the word "*however*," insert "That, except as to ordinary live stock, if such property so offered and received for transportation"; and

Strike out of lines 13 and 14 the words "That if the property so offered and received for transportation."

On page 3, line 15, after the word "or," insert "by other means, or if express authorization has been heretofore granted or shall be hereafter granted by the Interstate Commerce Commission for the establishment and maintenance of rates for the transportation thereof dependent upon the value of the property shipped, as stated in writing by the consignor and reference given in the rate schedule to such authorization, then."

On page 3, line 15, strike out the word "otherwise."

On page 3, at the end of the bill, insert as a new paragraph:

"That this act shall take effect and be in force from ninety days after its passage."

The committee recommends that said amendments be agreed to, and that the bill as so amended do pass.

The object of this legislation is to make carriers engaged in interstate commerce liable for the actual loss, damage, or injury to such property caused by them, notwithstanding any limitation of liability or of the amount of recovery in any receipt or bill of lading or in any tariff filed with the Interstate Commerce Commission save in one of two cases: First, where the property received for transportation is hidden from view by wrapping or boxing; and, second, save in such cases and as to such commodities as the Interstate Commerce Commission has heretofore or shall hereafter authorize rates for transportation dependent upon the value of the property shipped, as stated in writing by the consignor.

The bill, with a number of other similar measures introduced from time to time by the Senator from Iowa (Mr. Cummins) relating to the same subject matter was referred to a subcommittee composed of Senators Robinson, Myers, and Cummins. The subcommittee had hearings which were participated in by representatives of carriers, including railroad companies and express companies engaged in interstate commerce.

While at common law common carriers could not escape the consequences of their negligence by stipulating for a release of liabilty, either in whole or in part, yet the common law, as interpreted by the Supreme Court of the United States, and by the appellate court of some States, recognized as valid agreements between shippers and common carriers limiting the liability of the carrier to an agreed amount. In some cases the limitation was sustained on the theory that the shipper was estopped by his representations of value to claim a large amount, and in other cases upon the theory that the shipper had re-

ceived a lower rate for the transportation of his property than would have been given him had the actual value been stated Many States have statutes forbidding such limitations and requiring carriers to respond in the full amount of loss, damage, or injury occasioned by their negligence, and in some States the courts of last resort construed the common law to forbid such limitation.

The Supreme Court of the United States held in the case of the Pennsylvania Railroad Co. *v.* Hughes (191 U. S., 477) that, notwithstanding it had held in many decisions to the contrary, the decision of the Supreme Court of Pennsylvania in that case to the effect that all agreements limiting the liability to less than the actual loss or damage were void at common law should govern and be affirmed, and in the case of Solan *v.* Chicago, Milwaukee & St. Paul Railroad Co. (169 U. S., 133) the Supreme Court of the United States affirmed the decision of the Supreme Court of Iowa, which held valid a statute that forbade any limitation of the liability of a carrier for negligence and requiring it to pay full amount of loss, damage, or injury.

The so-called Carmack amendment, adopted in 1906, construed by the Supreme Court of the United States in the case of Adams Express Co. *v.* Groninger, and in other cases, had the effect of abrogating State laws forbidding limitations in bills of lading and recepits on the liability of carriers for negligence and consequent damage or injury to property transported in interstate commerce. The amendment was held to be a Federal regulation of interstate commerce, dealing with the rights of carriers and shippers under bills of lading and not prescribing full liabilty for damage or injury to property transported in interstate commerce, and that limitations of recovery to less than actual loss or damage caused by the carrier in bills of lading or receipts are valid.

It is, of course, necessary, where the property shipped is hidden from view by wrapping, that the representation as to value made by the shipper shall in all cases be binding upon him. This exception covers a large number of articles shipped in interstate commerce, and especially many of those carried by express companies.

There are some commodities which from their very nature the value of them can not be known to the carrier and is peculiarly within the knowledge of the shipper. The carrier is compelled to rely upon the representations as to value made by the shipper. We have therefore recommended the adoption of an amendment providing that where the Interstate Commerce Commission has already authorized rates based upon value as represented by the shipper, or where the commission shall hereafter do so, the liability for loss or damage caused by the carrier shall be limited to the value as thus represented.

The committee believes that no valid reason exists for authorizing limitations of liability on the part of carriers in contracts for the shipment of ordinary live stock, and if this legislation passes carriers will hereafter be required to respond in the full amount of damage or injury occasioned to ordinary live stock while being shipped in interstate commerce, such property being expressly excepted from the provision authorizing the Interstate Commerce Commission to establish rates based on value whereby recovery is limited to a declared value. It is believed that the effect of this legislation will be to establish natural, reasonable, and just rules governing the liability of carriers for lass or damage to property caused by their negligence.

Mr. FAULKNER. That action of the committee presented this bill to the Senate as the expression of the sentiment of the Senate committee on this subject.

Mr. Chairman, in discussing this bill, there are several matters which I think are important to call to the attention of the committee in case it should consider this bill carefully with a view to its passage, and you will see that they are the reasons we object to the bill as it was reported by the Senate committee. It says:

"Shall be liable to the lawful holder of said receipt or bill of lading for the full, actual loss, damage, etc."

It is a mistake in the bill as it ignores the condition of an order bill of lading which it would be very unwise to ignore. These bills are the basis of banking transactions, and in the interest of the shipper, under the rules and the conditions which are a part of the order bill of lading the property can not be delivered up except upon the

production of the order bill of lading, etc., and when produced the carrier must deliver the property to the holder. I think a mistake was made in using the language "shall be liable to the lawful holder of said receipt or bill of lading."

The CHAIRMAN. They would have to produce their proof in court, and when they produced that proof in court they would have to commence with the highest evidence and they could not get along without the bill of lading or without accounting for its absence. They would have to do one or the other.

Mr. FAULKNER. We claim it set aside the condition that the bill of lading itself shall be produced, and that when produced it is the duty of the carrier to deliver the property. We fear it set aside that condition and puts upon the carrier the burden to show that the person presenting it is the lawful holder. Of course, if it can not be produced, being lost, there are provisions in the bill under which to secure the railroad by giving bond, etc. It would be unfortunate to require the carrier to change the rule or condition of the order bill of lading.

The next proposition which I desire to direct your attention to is:

Shall be liable to the lawful holder of said receipt or bill of lading for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, notwithstanding any limitation of liability—

And so forth.

I hope that should the committee consider this bill, with a view of passing it, this phrase, "notwithstanding any limitation of liability," should be stricken out.

Then the bill proceeds:

Or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading.

This language which I suggest should be stricken out embraces every limitation of every character and description in the bill of lading. There are a number of limitations, and some important ones, in a bill of lading which affect the liability of the carrier that should be preserved that are recognized as essential by the courts, the legislatures of the several States, and by the Congress, and yet all of these limitations would be declared void under this clause.

In the framing of this bill the purpose of this act was not to strike out all limitations, but only limitations affecting values, or limitations affecting the right to recover the full value of the property. That was the real question. For example, there is a limitation in the bill of lading that provides that they will not carry, and that the shipper must declare the actual value of documents, specie, and articles of extraordinary value. Such a condition you would not desire to have stricken out, for that is a subject that should be fully considered and the proper rate on such a valuation should be made and paid. That this is the correct interpretation of the act, although not intended by its framers, it says:

And any such limitation, without respect to the manner or form in which it is sought to be made, is hereby declared to be unlawful and void.

All provisions are declared to be unlawful and void that affect liability; for instance, the provision that authorizes the carrier to destroy explosives if necessary in the public interest, if they are not properly marked and the railroads are not notified that they contain explosives when they are delivered to them. That limitation is in the public interest more than in the interest of the carrier. The purpose is to compel the shippers to give the carrier such notice as will enable it to take proper care in handling such articles, thus lessening the danger to the public in their carriage. You do not want to strike limitation out, and yet this language would have that effect. There are some others of a similar character that would be affected by this general clause.

We come now to the proviso as reported by the Senate committee:

Provided, however, That except as to ordinary live stock, if such property so offered and received for transportation is hidden from view by wrapping, boxing, or by other means, or if express authorization has been heretofore granted, or shall be hereafter granted by the Interstate Commerce Commission for the establishment and maintenance of rates for the transportation thereof dependent upon the value of the property shipped, as stated in writing by the consignor and reference given in the rate schedule to such authorization, then the rule of the common law shall apply thereto in so far as the limitation of the recovery to the value stated in writing by the consignor is concerned.

Gentlemen, you will perceive that after hearing the discussion of the measure the committee of the Senate realized that there must be some provision inserted giving the right to base rates on value not alone as to stock but other traffic. What are the other articles the rates on which are based on values? The articles that now go upon value to a great extent are as follows—I am reading now all that are embraced, I think, in every one of the three traffic divisions—live stock, stone, household goods, ores, cotton, hides, paintings, trees, shrubbery, potatoes, and so forth. It was asked to-day why those few articles are segregated from all the great mass of traffic transported in this country and put into classes on which the rates are based upon value; or, in other words, where there are two or more rates because of value. First, there is the ordinary rate; upon a greater declared value a rate is fixed. It has resulted on account of the wide variance between the lower and higher value of those particular articles. That is the reason they influenced the adoption into the schedules of these rates. It has been found necessary as a matter of justice to the shipper, more than as a matter of justice to the carrier. If the carrier had made an average rate, taking the highest and the lowest, and fixed the rate upon that average liability of insurance, it would have been unfair and prohibitive to the shipper transporting the low-grade article.

The CHAIRMAN. It has been conceded here time after time during this hearing that that differential is too great. Why have not the railroads adjusted that situation themselves instead of waiting for the commission to make them do it?

Mr. FAULKNER. Large bodies move slowly Mr. Chairman. They first tried to eliminate as many of these articles as they could. That has been their first policy. Their second policy has been to reduce the graduated scale depending on value. They have been frank with the commission. They have told them that they thought those graduated rates too high, as I am informed by counsel who appeared

before the commission. If there is any injustice, it is here. There are two places where, perhaps, there is an injustice either to the shipper or to the carrier, but that is a matter that can be adjusted by the commission, and will be in the case now before it. Perhaps the average that they took as the basis for the general rate is not sufficiently fair and just to the carrier.

Mr. ESCH. Why should potatoes be selected and not a whole lot of other agricultural products?

Mr. FAULKNER. The reason I put potatoes on the list arose under the following circumstances: The question came up last year on the New England roads. In one of its large potato-growing counties in the winter they wanted to ship their potatoes to the Boston market. Of course, potatoes were not so very high last year as they had been previously, but they found that on the rates that they would then have been compelled to ship under it would have been impossible, because those were rates that carried full liability. So it was proposed to those shippers to put in a rate that would carry them, the shipper releasing the liability of the carrier should the article be injured by freezing. It was accepted, and under that arrangement the entire potato crop of that county was moved to market. I suppose that illustration would cover a number of products of the soil, but that is the only case that I have information about, therefore I happened to mention it in this list.

If it was recognized by the Senate committee that there must be an increased rate on stock over and above the ordinary run of cattle on which a certain and given rate was made, and it was so recognized by the amendment that it made, is it not equally just and fair that as to each one of the other articles that are segregated and arranged to go under a separate bill of lading the same principle should apply? For example, take ores: You can not carry ores, or the lower ores, at an average rate between the highest and the lowest. Take, as another example, marble, which is a commodity ranging in value from 20 cents per cubic foot to $15 per cubic foot. The range between the extremes is too great. Therefore the carrier has put in a very low rate that the shipper can take advantage of and carry his insurance, so that marble can be transferred from the South to the North and from the North to the South, and to all of the intermediate States. They have large marble quarries in New England, and they transfer it down here, and a great deal of it is carried down South. They carry on the Southern Railroad a large amount of marble, both north and south, on these low rates. And so it is with each one of these 9 or 10 articles that are found to be of such a nature as to make it necessary to place them under these rate conditions. No one can dispute the fact that it is important to have such rates applied to cattle transportation; a $100 valuation might be a fair average, or $75 might be a fair average, but then when you transport horses valued at $10,000 and splendid bulls valued at $5,000, there must be a difference in rates because of the liability. The question is, Is the basis of the general rate fair and is the rate for the greater insurance of liability just? That is a question of rates for the Interstate Commerce Commission to determine, just as it is in all other cases.

Gentlemen, on the question of notice this bill provides—

Provided further, That it shall be unlawful for any common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than 90 days.

This provision covers all classes of traffic. So far as the general run of traffic is affected by it, I do not mean to say that it is not just and reasonable. I do not question it, because I do not know. When, however, you apply it to live stock it is not a fair and just provision of law. It is not reasonable in that connection, for if live stock is injured or damaged, especially in transit, the company ought to be notified at once. Notice should be given to the agent of the company at first opportunity. Notice of the damage, as far as it is known, should be given at once. The owners should not wait until the filing of the claim, but the notice should be given as promptly as possible. This should be done in order that the carrier might have an opportunity not only to see whether the damage to the cattle had occurred, but in order that the carrier might avail itself of the salvage. The carrier has a right to protect itself as far as possible, because it has to pay for them. For these purposes I do not know that I would say one day or two days or three days; I do not know that I would specify particular time; but it should be provided that the notice should be made as promptly as possible under the circumstances.

Mr. ESCH. Why not use the words "reasonable notice" in fixing on the limitation? Why not use the word "reasonable"?

Mr. FAULKNER. Reasonable notice, if applied to this character of traffic, would be construed by the courts, perhaps, just as the word "promptly" would be construed. It might be reasonable and prompt. I would rather have that language, because that leaves it to the courts to determine in each individual case. There ought to be prompt and reasonable notice to the agents of the carrier at the time of the injury, so that those agents can wire, or go themselves, and have the stock examined and, if necessary, preserve the salvage.

Mr. ESCH. What is the practice of the railroad companies in cases where there is injury done to live stock? Is it the rule that the railroad agent proceeds to the place of accident?

Mr. FAULKNER. That depends upon the conditions in the bill of lading. Some bills of lading are different from others. I can not state, in answer to your question, what the rule is, but perhaps Mr. Hooper can.

Mr. HOOPER. I did not catch the question.

Mr. ESCH. In case of injury to live stock, is it the custom for the agent of the company to proceed to the place of accident? Does the agent of the company proceed to the place of accident and view the injury and in a general way take evidence as to the loss?

Mr. HOOPER. That is the general custom. Most of the live-stock contracts merely call for notice before the cattle or the live stock have become intermingled with others and the claim follows. The practice is, in most cases, as you have described it, Mr. Esch.

Mr. FAULKNER. That certainly is but fair to the carrier. As to the four months' notice of filing claims, I understand from the commissioner's evidence before the committee of the Senate that the shippers and carriers have agreed on six months' notice of filing claims;

and as for the period of two years to institute suit, I see no objection to that.

Mr. Clements in his testimony before the committee stated distinctly that he was very much in favor of a definite legal period being fixed by statute within which the suit should be brought; that the difference in the laws of the different States was so great and so varied in their periods of time when suit should be brought that it was objectionable; that for interstate carriers there ought to be some definite period fixed within which suit should be instituted. It strikes me that two years is neither too short nor too long, and, therefore, I have no criticism to make of those two provisions, other than the criticisms I have already made.

The next provision is very difficult for anybody to understand. It is as follows:

> *Provided, however,* That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

I do not understand what this means. If a railroad should load or unload cattle it would be at a station or it would be at the stockyard, and the agents of the carrier are on the spot, and why, then, should they not be notified of any claim for damages caused by the injury or loss of cattle while being loaded or unloaded? Why should they not be notified? Both parties are at or near the station where the injury occurs, but this act relieves the owner of the date to give any notice.

Mr. Esch. As to delay in unloading, would not the demurrage charged by the carrier obviate any delay in unloading?

Mr. Faulkner. Yes; but this provisor does not connect the delay with the act of unloading. This reads, "If the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence." Now, according to the reading of this language, the only case in which negligence is involved under this provision is in the case of damage in transit.

Mr. Esch. I read that otherwise—that is, that if the loss or damage was due to delay or damage while being loaded or unloaded. It would relate back to the delay as well as to the damage.

Mr. Faulkner. But the word "or" is there, making it a separate sentence. If the word "and" had been used, it would be a different proposition. If it had read, "delay and damage while being loaded or unloaded," then it would be one sentence, but this distinguishes it and makes of it two separate propositions. That is done by using the word "or." You will find that they do not require any evidence of negligence for that delay or for that injury in loading or unloading. The negligence that he is excused from giving notice of is the negligence which causes damage in transit. Where the cattle are lost or damaged in any other way, then you will have to give the notice required under the previous provision. But in these matters, in which it is essential that this notice should be given in order to protect the carrier, no notice is required, but there is notice required under this other provision if there is an actual loss, because that is provided for in the previous section although it is not mentioned in this latter section.

There is another provision I desire to call your attention to; it is in the last section, which provides that this act shall take effect and be enforced from 90 days after its passage. Mr. Chairman, it is only necessary for me to say, from the evidence that has been presented here by Mr. Lincoln, and, as I have no doubt, will be presented by these gentlemen who represent the express companies that are so seriously affected by this matter, that if a bill like this should be passed, changing the situation as it now exists as to the classification and rates, the railroads would require a longer time than is provided here to be in a position to comply with its provisions. It would be necessary for them to file new tariffs and new bills of lading and have them approved by the commission, and it would require considerable time, probably over six months, if not a year. I think the evidence shows that very conclusively.

Mr. Chairman, I would like, without reading it—because I do not want to take up any more of your time than is necessary—to file as a part of my remarks a decision rendered in the matter of released rates on May 14, 1908. It was written by Commissioner Lane and agreed to by the commission, and I think it is the most perfect analysis of the law and one of the best constructions of the Carmack amendment made prior to the recent decisions of the Supreme Court on that subject.

The CHAIRMAN. You can identify it and hand it to the stenographer.

(The decision referred to is as follows:)

[Before the Interstate Commerce Commission. No. 933. In the matter of released rates. Decided May 14, 1908. Report of the commission.]

No. 933. IN THE MATTER OF RELEASED RATES.—DECIDED MAY 14, 1908.

1. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.
2. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.
3. If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value, (*a*) the stipulation is valid when loss occurs through causes beyond the carrier's control; (*b*) the stipulation is valid, even when loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith; (*c*) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value; (*d*) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.
4. A carrier may lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to value. These rates must be applied in good faith, regard being had to the actual value of the property offered for shipment.
5. A carrier must not make use of its released rates as a means of escaping liability for the consequences of its negligence, either wholly or in part.
6. It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law.
7. A stipulation that an additional charge of 20 per cent shall be collected on property that is shipped not subject to limited liability is unreasonable.

REPORT OF THE COMMISSION.

LANE, *Commissioner:*

Since the passage of the Hepburn Act the commission has been in receipt of numerous requests for an administrative interpretation of that part of section 20 which deals with the liability of carriers. Before undertaking to set forth its position in concrete form the commission deemed it advisable to hold an *ex parte* hearing in order to give carriers and shippers alike an opportunity to express their views. Pursuant to that purpose a hearing was held in Washington attended by the representatives of both interests. Inasmuch as the commission does not take jurisdiction over claims for damages to goods in transit it must be recognized that this problem is essentially one for the courts. But the validity of so-called "Released rates" is dependent upon its solution, and, if a definite statement of our position can meet with general acceptance, it will tend to eliminate much troublesome controversy and make for uniformity in railroad practice. We therefore take occasion at this time to give expression to our views, in the hope that they may be of advantage both to the railroads and the shipping public.

In undertaking a solution of this problem we must consider separately losses *caused by the carrier* and losses *due to causes beyond the carrier's control.* It will also be necessary to distinguish between *stipulations for total exemption from liability* and *stipulations limiting the amount of liability.* Bearing these distinctions in mind, we must determine the validity of "released rates" of the following character:

I. Rates conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control.

II. Rates conditioned upon the shipper's assuming the entire risk of loss.

III. Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.

Section 20 of the act provides:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

I. *If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.*

In the absence of express stipulation the liability of a common carrier is not limited to loss occasioned by its negligence or other misconduct. The law has cast upon it an extraordinary responsibility; it is to a large extent an insurer of the goods intrusted to it for carriage. The rule, roughly stated, is that a common carrier is liable for all losses not occasioned by the act of God or the public enemy. But the carrier's right to relieve itself to some extent from this complete responsibility by special agreement or notice has long been recognized. It may strip itself of its insurer's liability and remain responsible only for its negligence and other misconduct. York Manufacturing Co. *v.* I. C. R. R. Co. (3 Wall., 107); N. Y. C. R. R. Co. *v.* Lockwood (17 Wall., 357).

The law on this point is well settled, and a careful study of the provisions of the Hepburn Act will show that the carrier's right in this respect has not been abrogated. The law reads that the carrier shall be liable "for any loss, damage, or injury to such property caused by it * * * and no contract, receipt, rule, or regulation shall exempt the common carrier, railroad, or transportation company from the liability hereby imposed." The scope of this prohibition must turn largely upon the construction to be placed upon the word "caused." The word "caused" is not susceptible of a narrow interpretation—it is broad enough to comprehend all losses due to the carrier's misconduct, whether posi-

tive or negative in character. But it can not possibly be extended to cover losses due to causes beyond the carrier's control. We are necessarily driven to the conclusion, therefore, that the law places no restriction upon the carrier's efforts to exempt itself from liability for losses which occur without fault on its part. We are of opinion, in short, that in the absence of agreement or notice the carrier's liability is governed by the ordinary common-law rule; but that a stipulation for exemption from liability for losses due to causes beyond the carrier's control is open to no legal objection.

II. *If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.*

The Federal courts have held consistently that it is against public policy for a carrier to exempt itself from responsibility for its misconduct or the misconduct of its agents. They have refused accordingly to give vitality to a stipulation by which a carrier seeks to exempt itself from all liability or from liability for losses caused by negligence. New Jersey Steam Navigation Co. *v.* Boston Merchants' Bank (6 How., 344); Express Co. *v.* Kountze (8 Will., 342); *The Kensington*, 183 U. S., 263, 268. This principle is squarely reaffirmed by section 20 of the act. The statute expressly denies to a carrier the right to exempt itself from liability for losses caused by it. A stipulation that a shipment is carried at "owner's risk," will therefore be upheld as to losses due to causes beyond the carrier's control; but the provision is entirely void as against loss due to the carrier's negligence or other misconduct.

III. *Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.*

The question here considered is one of great nicety. It can not be dismissed a general statement. Careful study will show that there are three or four distinct phases, each of which must be dealt with individually.

(*a*) Where loss is due to causes beyond the carrier's control the stipulation limiting liability to a designated value is valid.

This follows necessarily from the conclusion we have already reached, viz, that the carrier has an undoubted right to exempt itself from responsibility for losses which it does not cause. *A fortiori*, there is no legal obstacle in the way of a reasonable stipulation limiting the amount which the shipper can recover under the same circumstances.

(*b*) When the shipper has placed upon his goods a specific value, the carrier accepting the same in good faith as their real value, the rate of freight being fixed in accordance therewith, the shipper can not recover an amount in excess of the value he has disclosed, even when loss is caused by the carrier's negligence.

The limited liability of the carrier in this situation, even as against loss due to negligence, has been generally recognized. The leading case on this point is Hart *v.* Pennsylvania R. R. Co. (112 U. S., 331), the Supreme Court stating the rule as follows:

"When a contract of carriage, signed by the shipper, is fairly made with a railroad company, agreeing on a valuation of the property carried, with a rate of freight based on condition that the carrier assumes liability only to the extent of the agreed valuation even in case of loss by the negligence of the carrier the contract will be upheld as a proper and lawful mode of securing a true proportion between the amount for which the carrier may be responsible and the freight it receives and of protecting itself against extravagant and fanciful valuations."

We quote further:

"If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity, because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed. * * * The compensation for carriage is based on that value. *The shipper is estopped from saying that the value is greater* The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract."

The same principle is applicable when the shipper has in some other way concealed the nature of the value of his goods in order to secure a lower rate of freight. If the circumstances call for a disclosure of value, and the shipper fails to make such disclosure, he will be concluded by the valuation stated in the bill of lading. The concealment may be just as effective and the fraud just

as real as if there had been an affirmative misrepresenttion. (Hart *v.* Pennsylvania R. R., supra; Magnin *v.* Dinsmore, 56 N. Y., 168; 62 N. Y., 35; Earnest *v.* The Express Co., 1 Woods, 573; Oppenheimer *v.* U. S. Express Co., 69 Ill., 62.)

It does not appear that this principle is in any respect in derogation of the provisions of section 20. The carrier is made liable "for any loss, damage, or injury," and "no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed." But it is of the highest importance to note that this limitation is not secured by contract or notice—the contract has no validity *per se*. It is only right that a carrier who has acted in good faith should be protected against the frauds and misrepresentations of the shipper, and the law accomplishes this through the operation of the principle of estoppel. The shipper is estopped from recovering an amount in excess of the declared value, and the rule is in perfect harmony with the law as it stands to-day. (6 Cyclopedia of Law and Procedure, title "Carriers," p. 401, note 5.)

(*c*) If the specified amount does not purport to be an agreed valuation, but represents an attempt on the part of the carrier to limit the amount of recovery to a fixed sum irrespective of the actual value, the stipulation is void as against loss due to the carrier's negligence or other misconduct.

Much confusion has arisen from failure to distinguish between this situation and the situation comprehended in Hart *v.* Pennsylvania Railroad Co., supra. That decision was expressly predicated upon the principle of estoppel; the shipper had misrepresented the value of his property and had thereby secured the benefit of a lower rate than he was properly entitled to by virtue of the real value. He was estopped by his fraudulent conduct from recovering an amount in excess of the value he had declared. In the case we are now considering the requisites of estoppel are wanting. An estoppel can not arise unless the party invoking it has been the victim of misrepresentation and has himself acted in good faith. Can it possibly be argued that when a carrier has arbitrarily placed in its bill of lading a stipulation limiting the amount of its liability, regardless of the actual value of the property, it may claim the benefit of an estoppel? Obviously not; it has not acted in good faith, neither has it been the victim of misrepresentation.

The cases which take cognizance of this fundamental difference in principle are numerous and well considered. In Eells *v.* St. Louis, K. & N. W. Ry. Co. (52 Fed. Rep., 903, 907) the case was carefully differentiated from Hart. *v.* Pennsylvania R. R. Co. The court said:

"In the case at bar the contract provision neither states nor attempts an agreed valuation of the animal shipped. Whether the animal is of $100, $1,000, or $10,000, or other value the contract is silent. But the contract expressly provides for a limitation of liability to $100, without reference to the valuation of the animal shipped. * * * Such a contract can not be said to be, in the eye of the law, just and reasonable in its attempt to limit the responsibility for the negligence of the carrier. When tested by the extracts above given from the Hart case, the failure of the contract in the case at bar to meet that test becomes strikingly manifest."

In Railway Co. *v.* Wynn (88 Tenn., 320) the validity of the doctrine that prevailed in the Hart case was again recognized and again distinguished:

"The carrier can not by contract excuse itself from liability for the whole nor any part of a loss brought about by its negligence. To our minds it is perfectly clear that the two kinds of stipulations—that providing for total and that providing for partial exemption from liability for the consequences of the carrier's negligence—stand upon the same ground and must be tested by the same principles. If one can be enforced, the other can; if either be invalid, both must be held to be so, the same considerations of public policy operating in each case.

"With great deference for those who may differ with us, we think it entirely illogical and unreasonable to say that the carrier may not absolve itself from liability for the whole value of property lost or destroyed through its negligence, but that it may absolve itself from responsibility for one-half, three-fourths, seven-eighths, nine-tenths, or ninety-nine one-hundredths of the loss so occasioned. With great unanimity the authorities say it can not do the former. If allowed to do the latter, it may thereby substantially evade and nullify the law which says it shall not do the former, and in that way do indirectly what it is forbidden to do directly. We hold that it can do neither. The requirement of the law has ever been, and is now, that the common carrier shall be diligent and careful in the transportation of its freight, and public policy for-

bids that it shall throw off that obligation, whether by stipulation for exemption in whole or in part from the consequences of its negligent acts. This view is sustained by sound reason and also by the weight of authority."

Referring to Hart *v.* Pennsylvania R. R. Co. and the cases which follow it, the court says:

"They were decided upon an entirely dissimilar state of facts and from a wholly different point of view; that is to say, it appeared in the court in each and every one of those cases that there was an agreed valuation stated in the contract as the basis of the carrier's charges and responsibility; and the courts very properly held that in such cases the shipper was estopped to claim a greater sum than the agreed valuation.

"Though evident from the reasoning in the body of the opinion in the Hart case, which may now be called the leading case in America, the court is careful to say in conclusion that the decision is based alone upon the ground above stated." (112 U. S., 343.)

In Alabama Great Southern Railway Company *v.* Little (71 Ala., 611) it was said:

"In the limitation of liability the carrier can not in any event stipulate for more than an exemption from the extraordinary liability the common law imposes; the liability extending beyond that of ordinary paid agents, servants, or bailees, denominated the liability of an insurer. Public policy and every consideration of right and justice forbid that he should be allowed to stipulate for exemption from liability for losses or injuries occurring through the want of his own skill or diligence or that of the servants or agents he may employ, or through his own or their willful default or tort. * * * The carrier can not stipulate for an absolute, unqualified exemption from all liability, nor can he stipulate that he will answer, in any and all events, only for a sum less than the value of the goods, because in consideration of reduced rates of freight the shipper may assent to it."

For further authority to the same effect see Scruggs *v.* Baltimore, etc., R. R. Co. (5 McCrary, 590); Ormsby *v.* U. P. R. R. Co. (4 Fed Rep., 706); Judson *v.* Western R. R. Corporation (6 Allen, 88); Adams Express Co. *v.* Stettaners (61 Ill., 184); Ga. Pacific Ry. Co. *v.* Hughart (90 Ala., 36); Ga. R. R. Co. *v.* Keener (93 Ga., 808); Ullman *v.* C. & N. W. Ry. Co. (112 Wis., 150); Railway Co. *v.* Sowell (90 Tenn., 17); Rosenfield *v.* Peoria, Decatur & Evansville Ry. Co. (103 Ind., 121; 53 Am. Rep., 500); Western Railway Co. *v.* Harwell (91 Ala., 340; 4 Elliott on Railroads, 2336; note, 14 L. R. A., pp. 434, 435: 6 Cyc., title "Carriers." p. 400, h.; Hutchinson on "Carriers," 3d ed., secs. 425–427).

(*d*) If the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount, liability for the full value can not be escaped in event of loss due to negligence.

This situation is substantially identical with that just considered—the difference is one in form only. If the shipper and carrier collusively agree that, for the purpose of the transportation, the property shall be deemed to have a specified value which both know to be grossly disproportionate to the true value, the agreement can not be called bona fide. It may be styled an "agreed valuation," but it is obviously an attempt to accomplish what the law forbids. The requirement that the carrier shall not limit in any degree its responsibility for negligence is uncompromising, and it will not yield merely because the parties choose to employ the phrase "agreed valuation." The law will not countenance so obvious a subterfuge.

We are aware that the distinctions which are here drawn have not been invariably recognized, but it is believed that this has been due to a misconception of the real scope of the decision in Hart *v.* Pennsylvania R. R. Careful study of the opinion of the court and of the cases which are cited in support of the decision must lead inevitably to the conclusion that the principle does not extend beyond the case where the "agreed valuation" is bona fide. It can not apply where the valuation is purely fictitious. To hold otherwise would mean a departure from principles which the Supreme Court has maintained with unvarying consistency. In the Hart case the Supreme Court says:

"If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity, * * *. He is estopped from saying that the value is greater."

But if the carrier and shipper both know that the value agreed upon is out of all proportion to the true value, it can not be said that the shipper has been

guilty of fraud or misrepresentation—he is not estopped from proving the real value of his goods.

It is significant that the cases upon which the Supreme Court placed reliance in the Hart case contain nothing inconsistent with this view, while in several the distinction has been expressly pointed out. In Harvey *v.* Terre Haute & Indianapolis R. R. Co. (74 Mo., 538) the court said:

"Where the reduced value is voluntarily fixed by the shipper with a view of obtaining a low rate of freight, without any knowledge on the part of the carrier that the property was of greater value, it would be a fraud upon the carrier to permit the shipper to recover a greater sum than that fixed by him."

In South & North Alabama R. R. *v.* Henlein (52 Ala., 606) the court said:

"If the measure of the liability thus fixed appears to be greatly disproportionate to the real value of the animal and the amount of freight received, we should not hesitate to declare it unjust and unreasonable."

In Graves *v.* Lake Shore & Michigan Southern R. R. (137 Mass., 33), it was expressly found that "the defendant had no knowledge of the value of the goods except that furnished by the statement of the shippers." The court therefore held that the shippers were "estopped to show that it was of greater value than that represented."

In the following cases also it appeared that the shipper perpetrated a fraud upon the carrier, either by a positive misrepresentation or by a concealment of value; the carrier was ignorant of the actual worth of the shipment, and the shipper was estopped from recovering damages in excess of the value disclosed: Magnin *v.* Dinsmore (56 N. Y., 168; 62 N. Y., 35; 70 N. Y., 410); Oppenheimer *v.* U. S. Express Co. (69 Ill., 62); Newburger *v.* Howard (6 Phila. Rep., 174); Muser *v.* Holland (17 Blatch., 412); Earnest *v.* Express Co. (1 Woods, 573).

These cases are entitled to special weight, because the Supreme Court has said that they support "the rule which we regard as the proper one."

It is pertinent to quote from certain other cases in which the distinctions here drawn have been clearly appreciated. In Georgia R. R. Co. *v.* Keener (93 Ga., 808) the court said:

"Where a shipper enters into an express contract with a common carrier, by which he agrees in consideration of a reduced rate of freight that the carrier shall not be liable for more than a stated sum in case the goods shipped are lost while in the carrier's possession, the contract will be upheld as to loss not involving negligence on the part of the carrier; but carriers can not, by any special contract, exempt themselves from liability for loss occasioned by their negligence; and this is so as well where the contract provides for partial or limited exemption as where it contemplates total exemption from liability. The shipper, it is true, may, by his representations or agreement as to the value of the goods, estop himself from recovering their full value, notwithstanding they are lost through the carrier's negligence. This would be the case if, upon being required at the time of shipment to state the value of the goods, the shipper misled the carrier by stating a sum less than their value (Code, sec. 2080), or if the shipper and the carrier agreed upon a certain sum as the actual value of the goods and the charge for freight was based upon that valuation. See, on this subject, Hutchinson on Carriers, 2d ed., section 250, and cases cited; Hart *v.* Railroad Co. (112 U. S., 331); Chicago, etc., Ry. Co. *v.* Chapman (Ill., 23 Am. State Rep., 587, and notes); Alair *v.* Railroad Co., Minn. (39 Am. State Rep., 588); also collection of cases in 29 Am. Law Register (1890), p. 771. But the principle which relieves the carrier from liability for more than the agreed value does not apply where the valuation is merely arbitrary and fixed without reference to the real value of the goods, and this is understood by the carrier as well as the shipper. In the present case there was no inquiry on the part of the carrier as to the value of the goods, and it is clear that a valuation of $5 per 100 pounds for wearing apparel and household goods indiscriminately could not have been understood to represent their actual value. The contract in question was simply an attempt to limit the liability of the carrier, without regard to the actual value of the property; and it follows from what we have said that it was inoperative for that purpose, if the loss was occasioned by negligence on the part of the defendant."

In the case of Alair *v.* Northern Pacific Railway Co. (19 L. R. A., 764) Judge Mitchell said, following the decision in the Hart case:

"Assuming, as we must, that the contract was fairly made for the purposes expressed in it, we think it ought to be upheld as just and reasonable. It is not in any proper sense a contract for exemption from the consequences of

negligence. In this view we are sustained by the great weight of authority. * * *

"Most of the cases, usually carelessly cited as authority on the other side of this question, will be found, on careful examination, to be clearly distinguishable and not in point. In some of them the stipulation was purely and solely one arbitrarily limiting the amount of recovery, without regard to the value of the property, as in Moulton *v.* St. Paul, M. & M. R. Co., supra. In others it was held that the shipper never agreed to the limitation, and for that reason was not bound by it. In others the decision was expressly placed on the ground that both parties knew that the property was of much greater value than that stated in the contract, and arbitrarily inserted a sum grossly disproportionate to the true value, solely for the purpose of limiting the amount of the carrier's liability.

In further support of this position we quote from Judge McClain's learned article on "Carriers" in the Cyclopedia of Law and Procedure:

"When the pretended agreed valuation is not such in fact, but is simply a cloak for a limitation of liability to a fixed sum, which is less than the real value, the contract will not be valid as against a loss due to negligence." (6 Cyc., title "Carriers," p. 401.)

In the third edition of Hutchinson on "Carriers," volume 1, section 427, the governing principle is stated with the same careful qualification:

"But while the owner of the goods and the carrier may fix a value on the goods beyond which the carrier in the event of loss will not be liable, the agreement fixing value, in order to be conclusive on the owner, must be bona fide and the value reasonable. If, for instance, the value agreed upon should be so far below the real value of the goods that from their appearance the carrier must have known of the discrepancy, the agreement fixing value would not be bona fide, and, depending on no value at all, would amount to an arbitrary limitation upon the carrier's legal liability which, in the event of loss occasioned by negligence, would not deprive the owner of the right to recover the real value of the goods. While it is true that the owner of goods of great value which are concealed in packages or otherwise hidden from view, and upon which a very inconsiderable value has been placed by him, will be precluded, in case of loss, from the right to recover a greater sum than the value which he has placed upon them, the reason for this exception is, that to charge the carrier with their real value, when by the owner's misrepresentation he has been induced to undertake the employment at a reduced compensation and to lessen the degree of care and vigilance which he otherwise would have exercised, would be to sanction fraud and to enable the owner to gain an unfair advantage over the carrier through his own misrepresentation. The knowledge which the carrier has of the real value of the goods tendered to him for shipment would therefore seem to be material in determining the effect of the valuation agreement upon his liability, although a contrary conclusion has been reached by some courts. And it may be stated as the better rule that where the value agreed upon is so out of harmony with the ordinary values of similar kinds of goods as to indicate that the question of value did not, in fact, enter into the agreement, and the carrier, under the circumstances, must have known of the discrepancy, the agreement placing a value on the goods will be considered as a mere attempt by the carrier to secure a partial exemption from liability, and of no effect in relieving him from the obligation of responding for their real value where his misconduct has occasioned their loss. So in the absence of fraud or concealment on the part of the owner of the goods whereby the carrier has been misled, the valuation agreed upon, it is said, must be reasonable, regard being had to the real value of the goods; and if such value be unreasonable, the owner will not be estopped from claiming damages on the basis of their real value."

The great bulk of authority is clearly in accord and at the same time in perfect harmony with Hart *v.* Pennsylvania R. R. Co. See Scruggs *v.* Baltimore, etc., Ry. Co. (5 McCrary, 590; 18 Fed. Rep., 318); Ormsby *v.* U. P. R. R. Co. (4 Fed. Rep., 706); Judson *v.* Western R. R. Corporation (6 Allen, 88); Adams Express Co. *v.* Stettaners (61 Ill., 184); Ga. Pacific Ry. Co. *v.* Hughart (90 Ala., 36); Ullman *v.* C. & N. W. Ry. Co. (112 Wis., 150); Railway Co. *v.* Sowell (90 Tenn., 17); Rosenfeld *v.* Peoria, Decatur & Evansville Ry. Co. (103 Ind., 121; 53 Am. Rep., 500); Western Railway Co. *v.* Harwell (91 Ala., 340; 4 Elliott on Railroads, 2336; 14 L. R. A., pp. 434, 435, note; Hutchinson "Carriers," vol. 1, sec. 427, and cases cited).

In the case of B. & O. S. W. Ry. Co. *v.* Voight (176 U. S., 507), we find this concise summary of the law:

"Upon these principles we think the law of to-day may be fairly stated as follows: 1. That exemptions claimed by carriers must be reasonable and just, otherwise they will be regarded as extorted from the customers by duress of circumstances, and therefore not binding. 2. That all attempts of carriers, by general notices or special contract, to escape from liability for losses to shippers or injuries to passengers resulting from want of care or faithfulness can not be regarded as reasonable and just, but as contrary to a sound public policy, and therefore invalid."

From these words it would seem to be clear that the law will not permit a carrier to stipulate against the consequences of its negligence, either wholly or in part. A stipulation can not attain validity merely because it appears in the guise of a fictitious agreed valuation.

But if there were room for any difference of opinion on this point prior to the enactment of the Hepburn Act, the passage of that measure has removed all uncertainty. The act expressly invalidates all stipulations designed to limit liability for losses caused by the carrier. Irrespective of a contract or notice limiting the amount of recovery, the carrier can not escape liability for full value in event of loss due to its own negligence or other misconduct, *except* in the single instance where the shipper has misled the carrier by his misrepresentation or concealment of value and estopped himself from recovering more than the value he has disclosed.

We entertain no doubt as to the legal strength of these conclusions, and it is a source of satisfaction to us that they are in accord with public policy and the dictates of justice. Public policy forbids that a carrier should escape the consequences of his negligence. If public policy is opposed to stipulations designed to secure *entire exemption* from such responsibility, the same public policy is opposed to stipulations providing for *partial exemption*. But it is obvious that a carrier may lawfully establish a scale of charges applicable to a specific commodity, and graduated reasonably according to value. The cost of carriage is not the only element in the carrier's charges—the carrier is subject to a certain insurance liability. It would seem proper, therefore, that when its insurance risk is enlarged by reason of increased value of the goods intrusted to it, it may provide for a reasonable increase in its charges. We hold that it is in contravention neither of the letter nor the spirit of the law for the carrier to provide a higher rating for goods of special value than it applies to goods of the same class but of lower value. If it enforces its tariffs in good faith, endeavoring to give to each shipment the rating which its value requires, the law affords complete protection against the frauds and misrepresentations of the shipper. But if the specified valuation is fixed by the carrier without reference to the real value, whether with or without collusion on the part of the shipper, liability for the full value can not be escaped in event of loss due to negligence.

The question of liability for loss occurring on connecting lines is outside the scope of our present inquiry. Consideration of that problem is unnecessary in order to determine the validity of "released rates," and we therefore refrain from taking it up at this time. It is, however, proper to call attention to the fact that in the recent case of Smeltzer *v.* St. Louis & San Francisco Railroad Company (158 Fed. Rep., 649), the Circuit Court of the United States for the Western District of Arkansas upheld this clause of the law in its entirety, and refused to give effect to a stipulation of the carrier that it should not be held liable for the negligence of its connections.

Our conclusions are as follows:

I. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.

II. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.

III. If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value—

a. The stipulation is valid when loss occurs through causes beyond the carrier's control.

b. The stipulation is valid, even when loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith.

c. The stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value.

d. The stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.

All tariff or classification rules or regulations which attempt to state, or which involve, any of the conditions or principles herein discussed should be constructed clearly in the light of these conclusions, and any such rules or regulations now existent which are not so constructed should be promptly revised.

In many informal complaints we are presented with the question whether the shipper can be charged with the duty of advising himself of all the conditions under which the carrier's rates are tendered, or whether he may plead ignorance of the contents of tariffs, receipts, or bills of lading. The act to regulate commerce requires carriers to publish, post, and file rate schedules containing all their charges for transportation. It makes the charges so published the only lawful charges, and prohibits both carriers and shippers from departing in any respect from the terms thereof. The Supreme Court has definitely decided that the rate so published and filed must be rigidly adhered to irrespective of the fact that the carrier's agent may have quoted or tendered a different rate. The carrier occupies a position of strategic advantage with respect to matters of transportation. The tariff rules and regulations are of its own making; the bills of lading and shipping receipts are drafted by its own attorneys. The shipper, on the other hand, has no such vantage ground. It can not be expected that he will always be familiar with the terms of the carrier's rate schedules and bills of lading, or that he will invariably know his legal rights. Practically he often has no choice but to accept the terms that are offered him. As the Supreme Court put it in the case of New York Central Railroad Co. *v.* Lockwood, supra:

"The carrier and his customer do not stand on the footing of equality. The latter is only one individual of a million. He can not afford to higgle or stand out and seek redress in the courts. He prefers, rather, to accept any bill of lading, or sign any paper the carrier presents, often, indeed, without knowing what the one or the other contains."

This being so, it is essential that the carrier's dealings with the shipper should be free from suspicion of unfairness or imposition of any description. Much of the friction that has developed between the public and the railroads in this regard is due doubtless to the fact that shippers, at the time of tendering their property for carriage, are not clearly advised of their rights, and do not understand fully the nature of the receipt which they sign. In the ordinary course of business few shippers are well informed as to the carrier's regulations. Many shippers are in ignorance of the different rates; are given bills of lading providing for limited liability, and become aware of the limitation clause only when a claim for damages is presented. It is therefore peculiarly the duty of the carrier's agents to give every reasonable assistance to shippers in order that they may know what are the lawful and most advantageous terms upon which the carrier's services may be secured. The provisions of tariffs and bills of lading should be fair and unambiguous, and free from suspicion of illegality. The shipper should be allowed his choice of rates which leave the carrier's liability unlimited as at common law, or lower rates based upon such a limited liabilty as the law sanctions. The rate finally fixed would not then be open to attack upon the ground that it was imposed upon the shipper and that he did not knowingly accept its terms.

Some tariffs have for several years contained the following rule, with perhaps slight modifications:

"Release or owner's risk: When a reduced rate is given on account of owner assuming risk of carriage as expressed in the tariff or classification, shippers must note 'Owner's risk' or the letters 'O. R.' on the shipping ticket or bill of lading, or execute a written release of the form prescribed by the carrier.

"When class rates governed by Western Classification apply, the class rates herein provided are applicable for freight shipped subject to all of the immunities specified in Rule 4 of Western Classification. On other freight not so shipped an additional charge of 20 per cent will be made.

"When commodity rates are conditioned upon 'Owner's risk' or 'Release' and the above-mentioned requirement is omitted, it will be understood (unless otherwise provided) that 20 per cent additional shall be charged higher than the commodity rates provided for shipments at 'Owner's risk' or 'Released,' unless class rates, governed by the Western Classification, make lower rates.

"Shipments provided for at 'Owner's risk' are entitled to owner's-risk rates when shipped 'Released,' and shipments provided for 'Released' are entitled to released rates when shipped at owner's risk.

"Where articles are provided for released to given valuations, the release given by shippers should clearly state the limitation of valuation. When this requirement is omitted, shipments will be subject to an additional charge of 20 per cent."

Rule 4 of the Western Classification provides as follows:

"Ratings made in this classification are for shipments made subject to the following conditions:

"No carrier or party in possession of any of the property provided for in this classification shall be liable for any loss thereof or damage thereto, from causes beyond its control, or by floods, or by fire, or by quarantine, riots, strikes, or stoppage of labor, or by leakage, breakage, chafing, crushing, loss in weight, changes in weather, heat, frost, wet, or decay, rust of metals or metallic goods, escape of bees, live poultry or live fish, tearing, cutting, or soiling of fabrics or paper in bales or bundles, fermentation of liquids, chipping of stone or manufactures thereof, injuries of live animals to themselves or each other, or from any cause to property carried on open cars. Shipments not made as above provided are subject to an additional charge of 20 per cent."

A rule has been carried in the official classification for many years to the effect that property shipped not subject to uniform bill of lading conditions will be charged 20 per cent higher than as therein provided, subject to a minimum increase of 1 cent per 100 pounds.

The southern classification provides in substance that property not shipped under the conditions of the standard bill of lading will be charged 20 per cent higher (subject to a minimum increase of 1 cent per 100 pounds) than if shipped subject to the conditions of the standard bill of lading.

Both the uniform and standard bills of lading contain provisions similar to that quoted above from the western classification.

It is therefore seen that these rules have existed for a long time. That they have been adhered to or that there has been any general effort to enforce them may well be doubted. But now that tariff rules and regulations are recognized as possessing a sanctity never before possessed, the reincorporation of such rules in tariffs and classifications is a question of much importance.

The practice of basing rates upon the condition that the carrier shall not be responsible for losses due to causes beyond its control has received legal sanction. Similarly we find no impropriety in a graduation of rates in accordance with the actual values of specific commodities. Household goods, for example, differ widely in value, and it is fair to all that the man who ships goods of low value should receive the benefit of a lower rate than the man who ships more expensive goods. Rate-making upon this principle is in every respect legitimate. It is proper to say, however, that the words "Value limited to * * * " are misleading. The phrase "Agreed to be of the value of * * * " recently incorporated into the tariffs of the roads which are members of the Southeastern Freight Association are less objectionable. They are indicative of the theory upon which these rates are justified—they are fixed with reference to the real value of the property and not because of an agreement that the amount of recovery shall be limited to an arbitrary specified amount. We can not emphasize too strongly our position that these rates must not be used by the carrier as a means for escaping the liability which the law absolutely forbids it to cast off. The same good faith that is required of the carrier is likewise enjoined upon the shipper. The carrier's agent can not always be expected to know the value of the goods that are tendered for transportation. In most instances it must accept the valuation fixed by the shipper; and when the amount so specified is accepted in good faith and made the basis of the transportation charges the law will not require the carrier to respond in damages to a greater amount.

We are not to be understood as suggesting a general revision of rates, for such revision is not necessary in order to conform to these views. But we should not hesitate to express our disapproval of tariff rules that are ambiguous and

misleading and to a certain extent incapable of enforcement. Rule 4 of the western classification, quoted above, would be unobjectionable if it went no further than to absolve the carrier from liability for loss due to causes beyond its control.

The carrier could not, however, escape responsibility for losses due to many of the causes catalogued therein if its negligence was the legal cause of the damage. The carrier must know, too, that the courts will not give full effect to stipulations that there shall be no liability for losses "from any cause to property carried on open cars." Again, the stipulation that "shipments not made as above provided are subject to an additional charge of 20 per cent" is unreasonable. A certain differential between rates which leave the carrier's liability unlimited and rates which provide for a limited liability is obviously proper, but the differential should exactly measure the additional insurance risk which the carrier assumes when the liability is unlimited. An increased charge of 20 per cent is manifestly out of all proportion to the larger risk involved, and its virtual effect is to restrict the public to rates calling for limited liability. Herein lies the vice in stipulations of this character. It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law. A revision in the interest of simplicity and fairness, eliminating such provisions as may be open to legal objection, would go a long way toward improving the relations of the railroads and the shipping public.

Mr. FAULKNER. I would like also, Mr. Chairman, to put in the record two or three expressions and questions by Senator Cummins and answers by Commissioner Clark, as I have marked them on pages 18 and 19 of this Senate hearing.

(The matter referred to is as follows:)

Senator CUMMINS. I suppose the subject could be reached by proper classification, however.

Commissioner CLARK. It could be; but, as I see it, only in the way of fixing a rate on what the cattle are actually and fairly worth, a certain limited amount, and a higher rate on those of higher value, just as you would fix a rate on whisky that was valued at $1 a gallon and another rate on that worth, say, $6 a gallon.

Senator CUMMINS. At one time of the year cattle would be worth 5 cents a pound and at another time of the year 7 cents. Are you going to change the rates according to the increase or decrease in the market price?

Commissioner CLARK. No; I do not think that would be necessary.

Senator CUMMINS. That you can not do. That is impracticable.

Commissioner CLARK. Up to a certain fair value on the average run of cattle that are shipped to the markets the rates should cover the full liability. I mean by that that the rate should not be so close and so narrow that it would go up or down with the price of cattle. That would induce a change in rates, not because of added risk, but because traffic would bear it when the market was high. I do not think that a wise thing to do, but I do not see how the rates to the great mass of shippers can be what I would consider reasonable if they must be so stated that the shippers can include those animals of great value and the carrier must assume full liability for all of the value of everything that is shipped.

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The CHAIRMAN. Why would not the same rule apply to dry goods as to whisky?

Commissioner CLARK. Because the dry goods are made up of a number of different kinds. They are shipped in mixed boxes, and there is not that same danger of loss, in the first place. A railroad company can not lose a case of dry goods, except by theft or fire, very well—I mean it can not be destroyed entirely. A barrel of whisky can be lost by theft or by fire or by some accident that breaks the barrel, and it is all gone; there is nothing left to show what the damage was.

Mr. FAULKNER. I would like also to insert the remarks of the chairman addressed to Commissioner Clark, the reply of Commissioner

Clark, the remarks of Senator Cummins, and the reply of Mr. Clements, to be found on pages 20 and 21 of the Senate hearing.

(The matter referred to is as follows:)

The CHAIRMAN. I can hardly conceive of a case where a limitation of that sort would be reasonable.

Commissioner CLARK. I do not think there are any such unless they are contained in live-stock contracts. I can only conceive of one reason for that and that would be a desire on the part of the carrier to avail itself of an opportunity to save the salvage of injured cattle. It might be something of that sort.

Senator CUMMINS. I assume it was prescribed in order to give the railroad company an opportunity to inquire more carefully into the circumstances of the loss, and preserve the evidence that might be at hand immediately after the accident, if it arose from an accident, which might disappear if a longer time were given.

Commissioner CLEMENTS. I was looking at a case a few days ago, in consequence of a letter from Senator Bristow, of Kansas, in relation to this matter, where the Supreme Court of Kansas had before it a shipment made under a live-stock contract, based upon tariff provisions, by which the shipper was required to give notice in writing to the conductor or the nearest station agent of the losses or injuries claimed before the stock was removed or mingled with other stock, and to file his claim for damages with some freight or station agent within 30 days. (Watt *v.* Missouri, K. & T. Ry Co., 135 Pac. Rep., 600.) The court based its ruling in part upon Missouri, Kansas & Texas Railway *v.* Harriman (227 U. S., 657), in which the Supreme Court of the United States held a stipulation that suit be brought within 90 days from the happening of the loss to be reasonable and not violative of the Carmack amendment. Evidently the purpose with respect to live stock and perishable things is to secure notice as quickly as possible, so that the carrier may look for evidence and see the stock or goods before they are sold or anything else is done with them, in order that it may have a fair chance to make proper proof as to what their condition was upon delivery. This seems reasonable, so far as practicable, without defeating the shipper in his rights, but to limit a shipper to 24 hours within which to file a claim, or even 30 days, seems utterly unreasonable in many cases. The right thing to do between man and man would be to give prompt notice. When you undertake to make a rule of law of uniform application it must permit sufficient time to take care of all cases as they arise, and any such period as is necessary for the shipper to present his claim in will in many cases be too short for the carrier to send an agent to examine the property.

Mr. FAULKNER. Mr. Chairman, I believe that finishes my statement.

STATEMENT OF MR. T. B. HARRISON, 61 BROADWAY, NEW YORK, REPRESENTING THE ADAMS EXPRESS CO. AND AMERICAN EXPRESS CO., AND ALSO SPEAKING FOR EXPRESS COMPANIES GENERALLY.

Mr. HARRISON. Mr. Chairman and members of the committee, I appreciate the time that you gentlemen have given to this hearing, and I will try to take up no more of your time than seems to be necessary in order to state particularly our situation—that is, the situation of the express companies with reference to the pending bill.

Of course, we are common carriers, under the act to regulate commerce and under the public-utility acts of the various States, and, while our business as a general thing may be considered to be rather on the same line and very similar to railroad business, yet in many important particulars it is essentially dissimilar. One of the difficulties we have in the proper conduct of our business and in obeying

the various laws is that laws which are passed to regulate railroads also regulate express companies, without taking into consideration the important differences in the way the two businesses are conducted.

The CHAIRMAN. Do you think it was contemplated by the author of this bill to touch express companies?

Mr. HARRISON. At one of the hearings on the first bill Senator Cummins said that it was not so contemplated. However, afterwards—and it seems that these things grew up by a process of evolution—it was understood that it was the idea——

The CHAIRMAN (interposing). It does not mention express companies.

Mr. HARRISON. But doubtless it is broad enough to cover express companies. Of course it would be necessary for me to say very little, if anything, if the committee were of the opinion that express companies should be left out. That is the interest I am appearing here for; not so much to oppose the bill, although I would have some opposition to it.

The CHAIRMAN. I am not expressing any opinion as to whether or not it is best to exclude express companies from the terms of the bill, but if in the nature of things the express companies are not to be affected by it, why bother yourself about it?

Mr. HARRISON. They would be affected by it unless they should be excluded, because the language includes them.

The CHAIRMAN. They do not do any of the business involved here, do they?

Mr. HARRISON. That is the principal objection that I think should be urged to this bill; that is, that they have sought to accomplish a specific object with reference to a small portion of the traffic of the country, and yet the bill covers the whole traffic of the country.

Mr. ESCH. All references to hidden packages would apply to you.

Mr. HARRISON. Yes, sir. As I understand it, this bill is an amendment to section 20 of the interstate-commerce act, and section 1 of that act refers to common carriers—railroads or transportation companies. Express companies have been made common carriers under the act by the amendment of 1906, and this bill reads, "any common carrier, railroad, or transportation company," or, as you will see, three different concerns. Express companies are common carriers "receiving property for transportation from a point in one State to a point in another State." All of that applies to common carriers, railroads, or transportation companies, and we are subject to the act.

The CHAIRMAN. That is the language of the original act, is it not?

Mr. HARRISON. Yes, sir; and that is the language of the bill also.

The CHAIRMAN. I am speaking of the amendment they are trying to incorporate in here.

Mr. HARRISON. The bill starts out the same way. The bill starts out with the words——

"That so much of section 20 of the act entitled 'An act to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, etc., "as reads as follows," etc., shall be amended "so as to read as follows," etc.

The CHAIRMAN. But all of it is the language of the original law except the particular part they are trying to put in by way of amendment.

Mr. HARRISON. Yes, sir; and what I read is the language of the original law.

The CHAIRMAN. If that amendment is not going to operate on you, I do not see why you should complain because we are writing the language of the original law in the bill.

Mr. HARRISON. The amendment to the original law does operate on us.

The CHAIRMAN. Well, you do not want the original law repealed, do you?

Mr. HARRISON. No, sir. Perhaps I do not catch your point, or I am not able to make you see mine. My point is this: We are common carriers under the act to regulate commerce, and there is a section of that act that provides certain duties and liabilities for common carriers, and that section of the old act is being amended. Now, irrespective of the language of that amendment, as long as it applies to common carriers it applies to us.

The CHAIRMAN. And while you are not now doing the things these people are doing, you may want to do some of them?

Mr. HARRISON. We are doing them now under some circumstances.

Mr. STEVENS of Minnesota. The Carmack amendment applies to you, does it not?

Mr. HARRISON. Yes, sir; and it was our case that caused all of this trouble. The Croninger case was an express company case.

The CHAIRMAN. Do you issue the same double-barreled kind of contracts that the railroads use?

Mr. HARRISON. We do not issue any other kind, and never have.

The CHAIRMAN. You limit your liability on everything?

Mr. HARRISON. We claim that we do not limit our liability at all; but our rates are based on the value of the articles we carry.

Mr. ESCH. You require a declaration of value?

Mr. HARRISON. Yes, sir. All of our rates are made by the Interstate Commerce Commission, and every rule, regulation, or practice that we engage in has been absolutely made by the Interstate Commerce Commission. All of these rates have been made by the Interstate Commerce Commission and they are based on value.

The CHAIRMAN. In doing that you are not trying to exempt yourself from liability, but you are simply trying to contract in advance as to what is the value of the articles carried.

Mr. HARRISON. Yes, sir.

The CHAIRMAN. And you contend that you have a right to settle that beforehand as well as afterwards.

Mr. HARRISON. Yes, sir; that is what we think.

Mr. ESCH. You had better put before us your full case.

Mr. HARRISON. I will do it as briefly as I can.

In the first place, gentlemen, I think it is not improper to call the attention of the committee to what seems to me to be a confusion of terms. Very able and intelligent gentlemen have been discussing here for the last few days the question of released rates, the question of so-called agreed valuations and the question of limitation of liability, and most of them, I will say without criticism, have used those terms as though they were synonymous, or as meaning practically the same thing. It seems to me that there has been a confusion of terms, and that they have entirely separate and distinct mean-

ings. That may be the reason why there has been apparent confusion about the matter; that is, because they have been using them as synonymous terms. As I understand it, a released rate—and I am giving the definition given by Commissioner Clark in some case, and also in the hearing before the Senate committee—as I understand it, a released rate is one that is dependent upon the shipper releasing his shipment to a certain value and without opportunity to take any other rate or any other value. It used to be the custom, to some extent, at least, in the railroad business that certain articles would be carried under what was called a released rate, that rate being the only rate and there being no choice of two rates. The bill of lading or contract of shipment was stamped released to the value of so much. In that case the shipper had no option; there were not two rates and there was no opportunity for the shipper to make a choice, and in a great many cases in the State courts, as well as in the Federal courts, arising under such circumstances, you will find that they have held the carrier to the full liability; that is, to liability for the full value of the article shipped. That was held because there were not two rates and the shipper did not have any option.

Now, as I understand it, a limitation of liability for negligence is an attempt to limit the company's liability because of acts of carelessness and negligence on the part of its officers, servants, or agents, and to relieve the carrier of any liability whatever. As I understand it it has never been the law in this country that a carrier could relieve itself of liability for negligence. It was not the law announced by the Supreme Court in the Hart case, which has been discussed here; it was not the law as announced by the Supreme Court in the Croninger case, and it is not the law as announced in the decisions of any court that I have ever heard of in this country that the carrier can limit its liability for negligence.

Now, there is another line of cases—of which the Hart case was the most noted example, probably, until the Croninger case—which holds that while the carrier can not limit its liability for negligence, yet it can agree, if it is a fair and square agreement and based upon proper considerations—it can agree with the shipper as to the amount of damage that should be paid to him if the carrier should be liable at all. The Supreme Court, in the Croninger case and in the Hart case, distinctly held that such an agreement was not a limitation of liability, and reaffirmed the old doctrine of the Federal courts, and, also, of the State courts, that there could be no limitation of liability for negligence.

With the permission of the committee, I will read a short extract from the decision of the court in the Croninger case:

> That such a carrier might fix his charges somewhat in proportion to the value of the property is quite as reasonable and just as a rate measured by the character of the shipment. The principle is that the charge should bear some reasonable relation to the responsibility, and that the care to be exercised shall be in some degree measured by the bulk, weight, character, and value of the property carried.
>
> Neither is it comformable to plain principles of justice that a shipper may understate the value of his property for the purpose of reducing the rate, and then recover a larger value in case of loss. Nor does a limitation based upon an agreed value for the purpose of adjusting the rate conflict with any sound principle of public policy. The reason for the legality of such agreements is

well stated in Hart *v.* Pennsylvania Railroad, cited above, where it is said (p. 340):

"The limitation as to value has no tendency to exempt from liability for negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed on. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater. The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into, and where there is no deceit practiced on the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing and of the freedom of contracting, and thus in conflict with public policy, if a shipper should be allowed to reap the benefit of the contract if there is no loss, and to repudiate it in case of loss."

Now, then, Mr. Thorne the other day, in answer to a statement that had been put in before the Senate committee as to the trend of authority on that subject in this country, suggested that there was a mistake in the States of Missouri, Kansas, and Tennessee. The statement was made, and I think it is correct, that the vast weight of authority in this country was to the effect that these agreements were valid. But the courts of Iowa and a few of the Western States held that these agreements were invalid, holding as against the Federal courts and a majority of the State courts that an agreement as to value was limiting liability. But Mr. Thorne suggested at the conclusion of the hearing the other day that there was a mistake in our list of States that upheld an agreement as to value, and I had a search made to see if there had been any late decisions which we had overlooked, and I find that there have been none. However, there have been two later Missouri decisions. The leading case was Harvey *v.* The T. H. & I. R. R., 74 Missouri, 538. There have been, as I say, two later decisions, namely, Kellermann *v.* Kansas City, St. J. & C. B. R. Co., 136 Missouri, 190, and Van Buskirk *v.* O. O. & K. C. Ry., 143 Missouri Appeals, 707. Now, in these cases the Missouri Court of Appeals, without overruling, but differentiating the facts and the law in the leading case, the Harvey case, voided the limitation on the ground that there was no evidence of reduced rate or consideration therefor, just as I contend is necessary.

Then there was a statute passed in Missouri in 1913, which is very similar in language to the Carmack amendment, which has not been construed by the courts at all. A good many of the States have passed similar laws since the passage of the Carmack amendment, and the opinion seems to be that the intention of the legislatures in passing those laws was to do for State business what we all understood the Carmack amendment did as to interstate business; that is, make the initial carrier responsible instead of requiring the shipper to sue the connecting carrier. That is the situation with reference to Missouri, but that statute has not been construed. The same thing is true about Kansas. I have looked up the situation with reference to Kansas, and I find the law in Kansas still is that an agreed valuation is good, and I find the same thing as to Tennessee. As to the Lockwood case, which was spoken of the other day, I wish to say that that was a case involving personal injury, and that the New York courts held and the Supreme Court held that there could be no limitation as against liability in cases of negli-

gence on the part of the carrier. Mr. Thorne also the other day called attention to the decision of the Interstate Commerce Commission in the matter of Released Rates (13 I. C. C. R., 550), and which Senator Faulkner has asked to be considered as part of the record in this matter.

Now, I want to call the attention of the committee to one or two things about that. I gathered from what Mr. Thorne said that he was of the opinion that the commission would not have rendered this decision in the way that it did except that it was following the Supreme Court or following the other courts, but I think that if the committee has the time to read that decision, it will find that the commission rendered that decision as an independent proposition in construing the Carmack amendment before it had been construed by the Supreme Court. This decision was rendered in May, 1908, and the first case in which the Supreme Court construed the Carmack amendment on the points involved here was the Croninger case, decided in the early part of 1913. At the time this decision of the Interstate Commerce Commission was rendered there was only one case, my recollection is, which had construed the Carmack amendment, and that was a case before the Federal court in Arkansas, although I have not the citation here. In that case the court merely held it to be constitutional; it only considered the question as to whether it was constitutional or whether it was the taking of the property of the railroad without due process of law to make the initial carrier responsible where the connecting carrier had caused the damage. So, therefore, the commission was in advance of the Supreme Court in construing this Carmack amendment.

What the commission decided in this case was the following—it is rather short:

If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.

If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.

If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value, (*a*) the stipulation is valid when loss occurs through causes beyond the carrier's control; (*b*) the stipulation is valid, even when loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith; (*c*) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value; (*d*) the stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.

A carrier may lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to value. These rates must be applied in good faith, regard being had to the actual value of the property offered for shipment.

A carrier must not make use of its released rates as a means of escaping liability for the consequences of its negligence either in whole or in part.

And then they held that a stipulation in the uniform bill of lading, or as the bill of lading was then, of 20 per cent was unreasonable.

Now, as to the question of public policy and what the commission really had in view, I think it would be interesting to read just a few

words to show that the commission was making an independent decision and reaching an independent conclusion. After stating their conclusions they say:

> We entertain no doubt as to the legal strength of these conclusions, and it is a source of satisfaction to us that they are in accord with public policy and the dictates of justice. Public policy forbids that a carrier should escape the consequences of its negligence. If public policy is opposed to stipulations designed to secure entire exemption from such responsibility, the same public policy is opposed to stipulations providing for partial exemption. But it is obvious that a carrier may lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to value. The cost of carriage is not the only element in the carrier's charges—a carrier is subject to a certain insurance liability. It would seem proper, therefore, that when its insurance risk is enlarged by reason of increased value of the goods intrusted to it, it may provide for a reasonable increase in its charges. We hold that it is in contravention neither of the letter nor the spirit of the law for the carrier to provide a higher rating for goods of special value, than it applies to goods of the same class but of lower value. If it enforces its tariffs in good faith, endeavoring to give to each shipment the rating which its value requires, the law affords complete protection against the frauds and misrepresentations of the shipper. But if the specified valuation is fixed by the carrier without reference to the real value, whether with or without collusion on the part of the shipper, liability for the full value can not be escaped in event of loss due to negligence.

Now, that decision was rendered, as I say, in May, 1908, five years before the Croninger decision, and, therefore, it could not have been influenced very much by it.

Mr. STEVENS of Minnesota. How did that case arise?

Mr. HARRISON. That case arose because of complaints which were made by shippers.

Mr. STEVENS of Minnesota. As to what?

Mr. HARRISON. As to the unfairness of the actions of the carriers and as to the 20 per cent increase.

Mr. STEVENS of Minnesota. That is what I wanted to get at, whether the increase had anything to do with it.

Mr. HARRISON. I can give you that in Mr. Clark's own language.

Mr. STEVENS of Minnesota. In Mr. Clark's language or in Mr. Lane's language?

Mr. HARRISON. I can not give it to you in Mr. Lane's language, but in Mr. Clark's language. Commissioner Clark said, page 11, hearing before the Committee on Interstate Commerce, United States Senate, on Senate bill 667, February 24, 1914:

> Mr. Chairman, in 1908 we received, and were receiving so many inquiries from shippers and from carriers as to provisions of this sort in tariffs and their application when they were contained in the tariffs, that we went into the subject carefully and issued a report on May 14, 1908, entitled "In the matter of released rates."

Mr. STEVENS of Minnesota. That was an investigation.

Mr. HARRISON. On order of the commission; yes, sir. They took testimony, and it was a very thorough investigation, too, of the railroad situation, but not of the express situation.

Now, I want to come to another suggestion, and it is this: It has been stated that in some of the States the law as construed by the State courts gave the shipper judgment or gave him recovery for full value. That statement was true, and it is also true that in a majority of the States the courts, construing the question as to whether an

agreed value was a limitation of liability, have construed it as not being a limitation of liability.

In two or three of the live-stock States that construction was given, but in the majority of the other States the law was the same as in the Federal jurisdiction. But human nature is weak, and the railroad claim agents sometimes wanted to pay claims to influence business, or for various reasons, and, of course, a man who made a claim very naturally wanted to recover the full amount, and in a great many of the cases, which statement can be very easily sustained, it would seem that the carriers were not as careful as they should have been about paying claims, and did not follow out the requirements of their tariffs and contracts. Long before the Croninger case, the Interstate Commerce Commission itself was inquiring into this very thing of the carriers paying claims that they had no right to pay and paying claims that were in violation of their tariffs and in violation of their contracts. The commission notified the carriers of the country that they would see, when they caught them at it, that they were prosecuted, and they did have indictments found at Chicago and further west against carriers who paid claims they had no right to pay. Some of them were fined and the cases against others were filed away. However, there was a general housecleaning, and that was the real, underlying reason why claims were not paid and have not been paid for the last few years. It is because the Interstate Commerce Commission——

The CHAIRMAN (interposing). If they became too liberal in settling these claims they were liable to indictment for rebating.

Mr. HARRISON. Yes, sir. And you gentlemen in the amendment to the act of 1910 have covered that very question, and that is the next thing to which I want to call your attention: Section 10 of the Interstate Commerce act, as amended by you in 1910, reads in part as follows:

> Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding $5,000 or imprisonment in the penitentiary for a term of not exceeding two years, or both,

in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

The penalty which is denounced against the shipper in that amendment of 1910 is also denounced against a carrier and his agents, and it was when the Interstate Commerce Commission and the various officers of the Government got to looking into this thing and found out that the last citadel or last rampart of the man who wanted to pay a rebate or get a rebate was in these claims and commenced prosecuting and threatening prosecutions that this claim business stopped. It was not the Croninger case; this had a good deal more to do with it than the Croninger case. You remember that it was common knowledge, at the time the railroads out West were charged with paying claims to the beef packers, not only on their finished product but on their live stock shipments——

The CHAIRMAN (interposing). And it was proved, was it not?

Mr. HARRISON (continuing). That they had a sort of meeting, and I think the commission agreed to refrain from having them indicted upon the promise of the railroads that they would not pay these claims and upon the promise of the shippers that they would not present the claims. That is the thing that has caused a lot of this trouble, and it is very proper and right.

I want to call your attention to another thing, if I may, and while I am not following the subject very concisely I will not keep you any longer than I have to. Take this situation as it is: This bill is either a rate bill or it is not a rate bill. Of course, that is a trite axiom. Some say it is not a rate bill but is simply a bill which seems to make the carrier responsible for the full amount of the value of the property damaged, irrespective of any representation whatever on the part of the shipper. But you take the case of a man who brings an automobile worth $5,000 into an express office—and we ship a great many of them every day—and we have a rate on an automobile worth that much not only made by us but made by the Interstate Commerce Commission; we have a rate on automobiles worth $5,000; we have a rate on automobiles worth $1,000, and on automobiles worth $2,000. We ask the shipper what that automobile is worth; he says, "$1,000," and we charge him a rate from New York to Chicago based upon the $1,000, but if this bill is passed and becomes a law he can bring a suit and recover $5,000 if he proves his automobile is worth $5,000, and at the same time the district attorney of the United States, under this tenths section of the interstate commerce act, can indict that man and send him to the penitentiary for a term of not exceeding two years and subject him to a fine of not exceeding $5,000. And we have that anomalous situation in the law, although it seems to me it is the policy of Congress or the policy of the Government that the shipper and the carrier should stand absolutely on the same footing. That is the situation and the thing that you are asked to put into the law of this country that men can take advantage of; however, there are very few men who would do it, but it would happen, a man taking advantage of his criminal act in order to recover a civil damage.

The CHAIRMAN. I think there would be a great many who would do it.

Mr. HARRISON. That may be. I submit to this committee and to the lawyers on this committee—and I think you must all be lawyers, judging from the questions you have asked these other gentlemen who have gone before me—if that is not a fair inference, not only a fair inference but a fair statement of the effect of this bill as it stands now. I think that that shows the unwisdom of putting a measure of this kind into the interstate commerce act, which is a comprehensive act regulating very directly all interstate commerce, every act that a carrier can possibly take and every relation with regard to transportation that any carrier, under its terms, can possibly have with any shipper. Yet this bill is offered without taking that into consideration, but I do not see how Congress can pass the bill without taking that into consideration, and there is one of the things that it brings about.

Now, speaking particularly with reference to the express business. the committee probably knows that the express business, while it is a large business, is a small business when compared with the railroad freight business. It started with a man and a carpet sack; it started because of the lack of banks and banking facilities; it started by the carrying of deposits to and from the banks for various merchants; it started with the idea of personal service. Now, while it has grown up to be a large business and to be a great business and a business which has a great deal to do with the material and commercial prosperity of the country, still its principal service is the idea of personal service, and its principal business, while it handles carloads, is a package business. As shown by the investigation of the Interstate Commerce Commission, about 48 per cent, I believe, of the packages handled by express was 11 pounds and under, and that substantially 85 per cent was under 75 pounds. And while they do handle a great many carloads of business, it is substantially a package business to-day, as it was in the beginning.

Now, on the question of public policy, the Government is in direct competition with the express companies on at least 33⅓ per cent of their business. It certainly can not be said that it is the wise or just public policy of the Government—I do not believe it is the policy of the Government, whether it is public policy or not—to itself decline to accept any responsibility whatever for shipments handled by it and require a common carrier with which it is in competition to accept the responsibility that is put on it by this bill. The parcels post carries packages for any distance up to 11 pounds, it carries packages for a certain distance up to 20 pounds, and it carries packages for a certain distance up to 50 pounds. So, as I say, it is at least 33⅓ per cent, if not more, in competition with the express business. There is a provision in the parcels-post law about consulting the Interstate Commerce Commission. I have no knowledge whether they have done that or not in this matter, but under the regulations of the Post Office Department no liability whatever is accepted unless the package is insured, and if it is insured it can only be insured against loss, no matter what the value of the package is. Up to $25 it costs 5 cents to insure a package, and up to $50 it costs 10 cents; and a package can not be insured for more than $50, no matter what the value is. Therefore it seems that, as far as our business is concerned, that is a decided answer to the question of public policy.

The CHAIRMAN. Is it not their purpose not to compete with you as to those small paskages, but to take that business away from you and let you handle the large business?

Mr. HARRISON. That may be their purpose, but it is a fact that it is in competition with us.

The CHAIRMAN. It has been insisted that there should be a monopoly in the parcels post on all small packages, if it can be done in practice without requiring it expressly by law, but it amounts to the same thing.

Mr. HARRISON. I would not call 20 pounds or 50 pounds a particularly small package of the kind of stuff that is handled.

The CHAIRMAN. It is smaller than a race horse.

Mr. HARRISON. Yes; and smaller than an automobile or a carload lot.

Mr. ESCH. But they might increase the weight up to 100 pounds.

Mr. HARRISON. We are fearful that that may be done; and when that is done, I personally think—I have said that before and I do not mind saying it again—that we are going out of business.

The CHAIRMAN. The people complained a long time and this committee talked about legislating a long time, and you had a long time in which to fix your rates so they would not put the parcels post on us, and then the committee finally attempted a bill to regulate, so as to avoid the parcels post, but you did not move fast enough.

Mr. HARRISON. Well, I think we were pretty slow and very nearsighted.

The CHAIRMAN. We saw it coming.

Mr. HARRISON. There are gentlemen—not members of this committee, but within the sound of my voice—who have heard me say that many times in years past to the express people, but what is gone is gone. We have gone through the mill and have been taught a lesson at least.

But I did want to say that the Interstate Commerce Commission, having full authority upon the subject and having received a great many complaints, entered upon an investigation of which we received notice, my recollection is, in June, 1911, in re express rates, practices, accounts, and revenues. That investigation was, I think, the most thorough and exhaustive investigation ever made by the Interstate Commerce Commission since it has been in existence. It went into every branch of the business, and I have understood generally that they had 100 men at work on that for a year or two and that it cost a large amount of money. There were many public hearings, at which any shipper or any individual could be heard. We presented testimony, were heard in argument, and filed briefs, and there were numberless conferences between shippers, or committees formed of shippers, express representatives, and representatives of the Interstate Commerce Commission. The result of that was an opinion by Commissioner Lane which is, of course, too large to ask to file, but you have that.

Mr. STEVENS of Minnesota. Yes; we have that.

Mr. HARRISON. That was a show-cause order. We were not only required to show cause, but all the complainants and everybody else were given public notice that they would be heard if they desired to be heard. The final outcome of that was that that order went into

effect on February 1, 1914. That order not only made rates upon every commodity shipped by express between every interstate point in the United States, but it prescribed a complete classification; it prescribed every rule, regulation, and practice; it went to the extent of prescribing the form of the waybills that we issue at our offices for shipments, and it prescribed our receipts. Then, they have up now—or we are under obligation, rather, to get up—a uniform live-stock contract and other receipts and to submit them to the commission. Now, those rates were based upon value. They were based upon an average value of $50 per package or 50 cents per pound. But before I go into that I want to say that as soon as we found out the effective date and knew that the Interstate Commerce Commission rates were going into effect, we undertook, for the sake of uniformity and in order that they might have a fair, square, and impartial trial, to get the various State commissions—forty-odd of them having control over rates on intrastate shipments—to adopt thte same rates, regulations, rules, and practices on State business that the Interstate Commerce Commission had adopted on interstate business.

In that we had the cooperation of the Interstate Commerce Commission, because that commission had made these rates based upon our whole business; it made them as reasonable rates for the service rendered in the various sections of the country, and they also wanted these rates tried out as a whole, so that they could have the benefit of the knowledge that would be secured as a result of the trial of these rates. Now, as I say, we had the cooperation of the Interstate Commerce Commission in getting these States to adopt these rates, rules, regulations, and practices, and it developed early in the negotiations which were brought about by this attempt of ours that there would have to be some modifications made of the Interstate Commerce Commission's rates in order to get the States, or a substantial number of the States, to adopt them.

We took that matter up with the Interstate Commerce Commission. We got the National Association of Railway Commissioners to call a special meeting in Chicago last December, which was attended by representatives of 25 or more States. We took the position that we could not modify, for State business even, the order of the Interstate Commerce Commission or the rules and regulations prescribed by that commission without the consent of the commission, and we went to the commission and asked for their consent, and it was modified for State business and also for interstate business. Those rules, with this modification, are now in effect in, I should say, at least 35 or 36 States. There are only a half dozen States in which they are not in effect, and we are industriously trying to get them in effect in those States, but it is a big field, a big country to get over. No State has absolutely refused or declined to put them in, but some want more investigation than others. We are trying to get those few States, so we will have for one time in this country a uniform system of transportation rates, rules, and practices.

Those rates were based, as I started to say a while ago, upon value. They are based upon a value of $50 per package or 50 cents per pound when the package weighs 100 pounds or more. Of late years there has been a large amount of produce, fruits, and vegetables—

heavy stuff—carried by express, and the 50 cents a pound was put in to cover the additional pound value of the larger packages or of the heavy-weight shipments carried by express. The $50 was put in to cover the smaller packages. The commission provided in our classification that the rates were based on value, and that we should be responsible for $50, or 50 cents a pound, as the case may be, in the absence of a declaration of value by the shipper, or unless he declared a greater value, the shipper having that option; and the commission required us to put in all our offices the rates, and to print on all receipts, in big letters, that the rates were based on value, etc. If the shipper ships a package and desires to declare a value of more than 50 cents a pound or $50, as the case may be, he pays an insurance of one-tenth of 1 per cent of the value declared. In other words, Mr. Esch, if you bring a diamond worth $1,050 and desire it shipped to your home in the West, the expressman, if you want to value it at $1,050, charges you the rate, which would probably be 35 or 40 cents to your home in Wisconsin, and he charges you $1 for the insurance. We take money the same way. We take bonds, we take everything. In our business we handle anything that anybody wants us to handle, and we perform any legitimate service except carrying a passenger.

There is another thing in the bill to which I wish particularly to call your attention, because that is of extreme importance. This bill applies to foreign shipments. There has been some intimation or suggestion that that would be stricken out, and that it would only apply to shipments in this country and to adjacent foreign countries. We have very large shipments, a large number of shipments, not only to and from foreign countries but to and from Canada, and not so much to and from Mexico, of course, now—shipments of very high value, art objects, shipments of stuff that come into New York from abroad and never stop in this country, but go through to Canada by express in bond. We had one the other day. I happened to be in the office of the American Express Co. and saw it. It was a shipment valued at the customhouse at $40,000. We had in our classification before this investigation by the Interstate Commerce Commission a provision that where a shipment was accompanied by an invoice or by a customs declaration showing the value that that value was to be taken as the declared value, and the rate based upon that value. That was the cause of complaint, because the shippers wanted to carry the insurance themselves or insure in an outside company, and they complained to the Interstate Commerce Commission as to that provision in our tariffs and in our classification, and it was cut out, our theory being, and also the theory that appealed to the Interstate Commerce Commission, that any shipper by express could exercise one of three options—he could insure with us, he could carry the insurance himself, or he could insure in an outside company.

We carry—of course I do not know how many thousands of dollars—but I think I am absolutely conservative in saying thousands of dollars worth of jewelry every day in and out of New York where there is absolutely no value declared. The jewelers have a cooperative mutual insurance company, which they say is even cheaper to them than our one-tenth of 1 per cent. Those policies have a subrogation clause, and they will ship jewelry worth $500 or

$1,000, or whatever the amount is, and if it is lost under circumstances that we have to pay they collect the $50 from us, and they credit the insurance company with the $50 and the insurance company pays the balance. That is the case with a great many art objects. A great many art objects come to this country and go back again. Now, those shipments are insured from the time they leave the gallery on the other side until they get back. They do not want to pay us the insurance rate from New York to destination. We had a shipment last year going to the Carnegie Institute at Pittsburgh. It just happened that the company with which I am associated had the shipment last year. That shipment was insured from the time it left London, on the ocean, on the train, and in the Carnegie Institute at Pittsburgh, and until it got back, for $1,500,000. Under an insurance policy with the subrogation clause the insurance company could put in a claim for damages against any carrier—ocean carrier, express company, or railroad company. If this bill were passed, the insurance company paid for taking the risk could recoup itself in case of loss or damage to insured shipments from the carrier.

We ship a good many horses—show horses and race horses. Some gentleman said the other day that there were no more race horses. There may not be any more race horses, but there are a great many race tracks maintained, and there are many horses shipped to those tracks. There was a horse owned by Mr. J. B. Haggin, who just died the other day—Salvator, supposed to be the most valuable race horse which ever lived, and he was insured, just as your life and my life are insured, for $100,000—and that horse was shipped by express a distance of 94 miles for $50. There was no declaration of value. If this bill was in effect and our tariff filings, therefore, made void, and that horse had been killed, the recovery would have been for the benefit of the insurance company. I do not believe that any kind of policy whatever requires a law of this kind to be passed. If live stock is separate and distinct, and if it is a fact that live stock requires separate and distinct treatment from ordinary shipments or freight shipments, we have no particular objection to that; but we think, if a bill be passed, it should apply to live stock only. At the same time we feel that from the class of horses and animals of various kinds that we carry there should be some opportunity to charge on the value, and if the shipper wants to carry the insurance himself, or if he wants to insure in an insurance company, he should be allowed that option.

There was another idea I had. This would be, to some extent, a repeal of the Harter Act, if you do not take out the foreign provision. Under the Harter Act a shipowner is not liable for anything when he has exercised due diligence in providing a safe ship and a proper crew. There are shipments of furs going to London or Germany worth thousands of dollars, some of them shipped from St. Louis or Chicago. The war has stopped that to some extent. We are not a carrier, except to New York, but they prefer to ship them by express and pay higher charges because of the quicker time. We are not a carrier beyond New York, but if this bill should pass we would be responsible to the shipper for the full value of a shipment lost at sea, and the ship would not be responsible to us unless the Harter Act be repealed.

There is another suggestion I desire to make. These other gentlemen have all discussed the questions of limitation and notice. It is really of more importance to us that we have notice of loss or damage than to the railroads. In the receipt which the Interstate Commerce Commission has prescribed for us, and which they compel us to file as a part of our classification, etc., they make this provision. Understand, please, that all these classifications, these receipts, and these rules were made after two years' investigation, in which numerous representatives of shippers took part. There is no question of everybody having a full hearing, and our shippers seem to be satisfied with this valuation provision. Here is the provision that was put in, and my recollection is that it is substantially as dictated by Secretary Lane, then Commissioner Lane:

> Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or in case of failure to make delivery, then, within four months after reasonable time for delivery has elapsed. Suits must be instituted within one year after rejection of claims.
>
> Unless claims are so made, the carrier shall not be liable.

That requires a claim to be made four months after delivery or after a reasonable time for delivery, and our rules and classifications require us to reject the claim in writing within a reasonable time. There can be no rejection of a claim except in writing.

It seems to us that that is a reasonable protection to any shipper or any claimant who pays any attention whatever to his business.

There are some other gentlemen representing other express companies who would like to be heard, and I will not further encroach upon the committee's time except that I want to say a few words in reference to the Croninger case. When the Carmack amendment was passed I think it was supposed by almost everybody that the meaning and intent of that amendment was merely to make the originating carrier responsible for the acts of the succeeding carriers and to save trouble and expense for the shipper. The way that the litigation arose was this: The first case in which that was considered was in New York, the case of Greenwall *v.* Weir. The carriers did not start out claiming that the Carmack amendment gave them any advantage over what they had before. They claimed that it did not set up any rule of liability at all, and that the words "liability hereby imposed" meant the liability of the originating carrier for the acts of connecting carriers, but it was the representatives of the shippers and of the claimants who claimed and sought an opportunity to have it so adjudged that the Carmack amendment changed the rule of liability or changed the rule that had been laid down in New York and these other States, and so changed it that this valuation clause in the tariffs of the carriers were void. That was the question which was originally litigated out.

Then it came about in the evolution of litigation and in the evolution of construction that the court held finally when it got to the Supreme Court that Congress having passed on this question took it out of the State jurisdiction, and it did strike down the law as had been announced by the decisions in a few of the States as far as interstate shipments are concerned, but it merely kept in effect the law as announced by the decisions in the Federal courts and in the great majority of the States. The policy as shown by the passage of

numerous acts by Congress is that for these things which refer to and which have to do with and are closely connected with interstate commerce, there shall be one rule and one regulation. You passed a law with regard to safety appliances and you passed a law in regard to employers' liability, and you have passed various other laws dealing with interstate commerce. They at once struck down all State laws on the subject so far as carriers engaged in interstate commerce are concerned.

I want to make one suggestion. I want to ask, in view of the very drastic and thorough investigation and decision of the Interstate Commerce Commission as to the express business, and in view of the fact that it will make some change in that—I do not know what—and in view of the fact that our earnings under these rates which are prescribed by the Interstate Commerce Commission, and which have been in effect since February 1, for the four months that we have reported to the commission show for the express companies represented here an actual deficit in operation of nearly $800,000, brought about by the change in the rates and, of course, to some extent by the parcel-post competition and by a great many of the rules and regulations of the commission increasing expenses, first, that we be left out of this bill if it is to be passed; second, if not left out, and if any bill is deemed necessary, which we do not think is so, that it may be a bill relating to live stock, and that we be left out; and, third, if the committee should determine that Congress wants to announce a policy as a general policy, that it be done in the same way that the fourth section of the act was amended in 1910. Now, Congress announced a policy in that amendment which evidently was a very wise policy, that as a general rule there should be no greater charge for the shorter than for the longer haul, the shorter being included within the longer, but allowed the commission in exceptionual cases, and after investigation, to permit the carrier to do that very thing. If we can not be left out entirely, then we desire some amendment or some language inserted in the bill which will allow the commission, if it sees fit under the peculiar circumstances concerning our business, to permit us, as we are now doing, to make rates based on value, giving the shipper an absolute option to pay the rate he pleases. The rates we charge on interstate shipments are the rates made by the Interstate Commerce Commission, and prescribed by them as just and reasonable and nondiscriminatory.

STATEMENT OF BRANCH P. KERFOOT, GENERAL ATTORNEY FOR WELLS, FARGO & CO., 51 BROADWAY, NEW YORK.

Mr. KERFOOT. Mr. Chairman and other members of the committee, before starting on my remarks on this bill I should like to say to you that Mr. Shearer, who has been present throughout these hearings on behalf of the Southern Express Co., found it impossible to wait longer, and asked me to make his excuses and say for him that Mr. Harrison's presentation of the views of the express representatives has covered the situation so fully that he felt it unnecessary to remain.

We appreciate the patience and courtesy with which this committee has listened for several days to the statements of those favor-

ing and those opposing the bill, and now that the time set for closing the last session has passed and I am the only one remaining to be heard from, I shall not take up any time in repeating the matters already covered by Mr. Harrison and will consume only a few moments.

The situation of the express companies has been referred to in these hearings as that of innocent bystanders. That is really not an inaccurate description. The situation that has given rise to the introduction of this bill was a local live-stock situation existing in the Southwest. But the man who went gunning for it, instead of using a rifle has loaded up his shotgun with bird shot and struck anything in sight.

I do not believe that there can be any doubt that the bill was not intended to affect the transactions of the express companies.

We are here to make a twofold request, namely, that you prevent a bill from passing in a form which would make it accomplish far-reaching results that its drafters have never intended it should accomplish, and, further, if its proponents must be held to have intended the results that it would accomplish, then that you consider carefully whether those results are such as you are willing to sanction.

Mr. Harrison, in his discussion, has covered quite fully most of the points that the express companies felt it necessary to have emphasized on this hearing, particularly the fact that you have already made ample provision by statute to clothe the Interstate Commerce Commission with full authority to regulate the practices covered by this bill and the fact that that commission not only has before it a number of cases involving such rules for the railroads, but that as to the express companies the Interstate Commerce Commission has only recently concluded the most thorough investigation it has ever undertaken, and as a result of that has promulgated a system of rates and uniform rules, regulations, and practices for all express companies for all interstate shipments. These are now in effect not only for interstate shipments but have been adopted even for intrastate shipments in all States except a few.

As an essential part of those rates and practices the very question covered by this bill has been passed upon, and passed upon after a most careful and exhaustive consideration. And this bill is, therefore, in effect an appeal from the order of the Interstate Commerce Commission to Congress. There is, of course, no question of your authority to entertain such a proceeding, but it is urged that the question can not be considered apart from the whole rate scheme and structure, of which it is an integral part. Therefore to consider it adequately would require a more comprehensive consideration than a committee of Congress can possibly find time to devote to it. In fact, it took a large portion of the time of the Interstate Commerce Commission for years and involved a great expense on the part of the commission and of the express companies, and the result is now being tested. One of the purposes for which the Interstate Commerce Commission was created was to give to just such matters the consideration that was requisite as a basis of wise regulation and that Congress did not always have time to afford them through its own Members.

The uniform express receipt prescribed by the Interstate Commerce and now in use by all express companies is in the form following:

Company will pay not over $50 in case of loss, or 50 cents per pound on shipments in excess of 100 pounds, unless a greater value is declared and higher rates paid.

——— ——— Express Co.,
———— ————, *191—*.

Nonnegotiable receipt.

Received from ——— ———, subject to the classifications and tariffs in effect on the date hereof, ——— ———, value asked and —— declared.

Consigned to ——— ———, which the company agrees to carry upon the following terms and conditions, to which the shipper agrees, and as evidence thereof accepts this receipt.

1. The provisions of this receipt shall inure to the benefit of and be binding upon the consignor, the consignee, and all carriers handling this shipment, and shall apply to any reconsignment or return thereof.

2. In consideration of the rate charged for carrying said property, which is regulated by the value thereof and is based upon a valuation of not exceeding $50 for any shipment of 100 pounds or less, and not exceeding 50 cents per pound for any shipment in excess of 100 pounds, unless a greater value is declared at time of shipment, the shipper agrees that the company shall not be liable in any event for more than $50 on any shipment of 100 pounds or less and for not exceeding 50 cents per pound on a shipment weighing more than 100 pounds unless a greater value is stated herein, and said property is valued at and the liability of the company is hereby limited to the values above stated, unless a greater value is declared at the time of shipment and stated herein and charge for value paid or agreed to be paid therefor.

3. Said property is accepted as merchandise only, and the company shall not be liable for the loss of money, bullion, bonds, coupons, jewelry, precious stones, valuable papers, or other matter of extraordinary value, unless such articles are enumerated in the receipt, as the company does not transport such articles except through its money department.

4. Unless caused by its own negligence, the company shall not be liable for—

a. Difference in weight or quantity caused by shrinkage, leakage, or evaporation.

b. The death, injury, or escape of live freight.

5. The company shall not be liable for loss, damage, or delay caused by—

a. The act or default of the shipper or owner.

b. The nature of the property or defect or inherent vice therein.

c. Improper or insufficient packing, securing, or addressing.

d. The act of God, public enemies, authority of law, quarantine, riots, strikes, perils of navigation, the hazards or dangers incident to a state of war, or occurring in customs warehouse.

e. Loss or damage in any way arising out of the examination by or partial delivery to the consignee of C. O. D. shipments.

f. Any loss or damage occurring in shipments delivered by instructions of consignor or consignee at stations where there is no agent of the company after such shipments have been left at such stations.

6. Packages containing fragile articles or articles consisting wholly or in part of glass must be packed so as to insure safe transportation by express with ordinary care. If not so packed and plainly marked so as to indicate the nature of the contents, the company shall not be liable for damage to such shipment unless proved to be negligent.

7. If no express company has an agency at the point of destination, said property may be carried to the agency nearest or most convenient thereto and the consignee notified.

8. Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of said property, or in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed.

Suits must be instituted within one year after rejection of claims.

Unless claims are so made and suits so brought the carrier shall not be liable.

9. If any C. O. D. is not paid within 30 days after notice of nondelivery has been mailed to the shipper, the company may, at its option, return the

property to the consignor and collect the charges for transportation both ways.

10. The company shall not be required to make free delivery at points where it maintains no free delivery service nor at any point beyond its established and publishd delivery limits.

Charges, ———.

For the company, ——— ———.

The company's charge is based upon the value of the property, which must be declared by the shipper.

The rules governing the presentation of claims and the institution of suits on express shipments are:

8. Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of said property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed.

Suits must be instituted within one year after rejection of claims.

Unless claims are so made and suits so brought the carrier shall not be liable.

A difference, readily overlooked, between express business and freight is that the former is made up of an almost infinite number of small transactions. Although it is estimated that the aggregate gross revenue of the express companies for the present fiscal year will be about $300,000,000, the average revenue per transaction is less than 50 cents and the total number of transactions is therefore over 600,000,000. The auditing of these waybills and the preserving of records for all these shipments, even for the shortest practicable time, is one of our heaviest expenses and greatest burdens, and it is not only impossible to keep these records indefinitely but it is a matter of necessity that they be stored away in warehouses after a few months and destroyed after a reasonably short time. To compel us to keep them indefinitely would impose an expense that the business could not stand, while to allow claims to be presented after the destruction of the records would mean that the claims or suits upon them could not be defended.

While the vast majority of shippers are honest, there are always some that would take advantage of such a situation, and it is not impossible that some dishonest claim agents or other overzealous express employees might conspire with favored shippers and revive the practices of rebating which the present law so effectively prevents.

A reasonable limitation of time for both the filing of claims and the bringing of suits is necessary, and if reasonable seems to be entirely proper and will doubtless commend itself to this committee. A proper determination as to just what is a reasonable limitation can not be arrived at intuitively, but must be based upon a thorough investigation such as the commission has just taken the time and incurred the expense to conduct. It is respectfully submitted that their determination should not be overruled before it shall have been tested.

The bill would not only abolish such of these provisions as refer to limiting the time for the presentation of claims or beginning of suits, but would abolish the arrangement under which the shipper and the carrier now stipulate in advance as to the value of the article shipped. The provision in this regard, as set forth in the receipt, is as follows:

2. In consideration of the rate charged for carrying said property, which is regulated by the value thereof and is based upon a valuation of not exceeding

fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound for any shipment in excess of 100 pounds, unless a greater value is declared at time of shipment, the shipper agrees that the company shall not be liable in any event for more than fifty dollars ($50) on any shipment of 100 pounds or less, and for not exceeding fifty cents per pound on a shipment weighing more than 100 pounds unless a greater value is stated herein, and said property is valued at, and the liability of the company is hereby limited to, the values above stated, unless a greater value is declared at the time of shipment and stated herein, and charge for value paid or agreed to be paid therefor.

The cases in which the courts have construed this and similar provisions have already been discussed at these hearings. The practice at present amounts to nothing more than an agreement as to the value of the article before it is lost, rather than a determination after it is lost as to its value, by agreement or litigation. It is human nature for a person to attach, and not dishonestly, a greater value to a shipment after it is lost than he considered it to have while he possessed it. My experience with the settlement of litigated express claims for the last five years has convinced me that the most fruitful source of friction and dissatisfaction between the shippers and the express companies in the matter of the adjustment of claims is not on the question of liability, but on the question of damages. If this matter is stipulated before the shipment is sent the claim can, in almost every instance, be settled without undue delay, without friction, and without great expense on the part of the shipper. It is the duty of the carriers to see that the amount paid is no more than the amount to which the shipper is lawfully entitled. The claims presented frequently, if not usually, are far in excess of the actual damage, in those cases where the value has not been agreed upon before the shipment was lost. This means, in most such cases, extensive correspondence, and frequently litigation, which is expensive and unsatisfactory to both the carrier and the shipper. In such cases as the actual value can not be determined at the time of the shipment, it is at least possible for the shipper to stipulate with the carrier that the value does not exceed a definite amount.

In the vast majority of cases the shipments are of a less value than $50, and the stipulation that they do not exceed in value $50 each, or 50 cents a pound, if more than 100 pounds in weight, allows the shipper to collect the legitimate value of his shipment, and if the shipment is of a value of over $50, the agreed value can then be stipulated not to exceed some higher valuation, upon the payment of a slight additional charge, which extra charge has already been determined to be fair and reasonable and has been fixed by the Interstate Commerce Commission as an integral part of the new system of express rates. In these instances where the maximum value so stipulated is approximately the actual value, the claims are paid upon that basis, without the necessity of elaborate proof as to actual value. It is therefore good public policy, as well as good policy from the standpoint of the carriers, to have at least an approximate liquidation of damages in advance wherever it is possible to do so.

The only instance in which such a rule would work a hardship upon the shipper would be the one in which he has not had an alternative rate and an opportunity to fix a greater value if he desired to do so. The commission has protected the shipper in this regard in a number of ways; such as prescribing not only the contents but

the style of printing the uniform express receipt, and providing for a notice in this on this point in such large and bold type as to stand out more prominently than any other feature of the receipt and also by requiring the provisions, now, for the first time, to be made a part of the tariff filed and posted; so that it would seem that any shipper by express must deliberately close his eyes and his mind to this feature in order to avoid knowledge of it. And when we add to this the fact that substantially the same $50 provision has been in effect by all express companies for many years, it would seem that now no shipper could make such a stipulation inadvertently.

And if the shipper does knowingly stipulate as to a value which will reduce the express charges, as has already been pointed out, it would manifestly be unfair to allow him, by so doing, to get a reduced rate and in case of loss or damage recover a larger amount.

The duty of the express companies in handling the great mass of shipments is to afford them all reasonable care consistent with an "express" or expedited service. But the degree of care required for a shipment of great value is different from that required for a shipment of little value. It might be gross negligence for an express company to handle a crated painting of enormous value with the same degree of care that would be entirely sufficient for a theatrical display board of nominal value similarly crated. It is right that warning of value, which is peculiarly within the knowledge of the shipper, should be given to the express company to which the shipment is intrusted.

It is the rule of the express companies to use different degrees of care in reference to articles of different values—for example, in handling every shipment valued at over $50 every employee who handles it is required to take a written receipt from the employee to whom he passes it along. Such a precaution is not practicable for each of the 600,000,000 shipments moving annually, and would accomplish no beneficial result in the vast majority of cases where the shipments are of very slight value.

Another feature of the bill that seems to be wholly impracticable is the provision at the top of page 4 of the bill as now printed, to wit:

> *Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be—

And so forth.

For the express companies to require the shippers to make such affirmative declaration in writing of the value of every shipment forwarded would be wholly impracticable. Even if it were possible for the shippers to do so, it would cause endless inconvenience to all but the occasional shippers, who send almost an infinitesimal portion of the shipments, and frequently the servants or messengers by whom such shippers send their packages to the express office could not do so. The receipts issued for merchandise shipments do not require the signature of the shipper. For the larger shippers book receipts are used, in which an express company receipts for a large number of shipments on one page. The shipments from the commercial shippers go out in vast quantities at the end of each day. Between 4 and 6

o'clock in the afternoon wagonloads of such shipments are receipted for and hauled away with all possible dispatch. If the shippers could "specifically state in writing the value of the goods," to do so would be an intolerable burden and would seriously delay the business.

But, as Mr. Chandler has stated to you on behalf of the large merchandise shippers, it would be a matter of physical impossibility to state these values, for the sufficient reason that they are not known to the shippers themselves until after the shipments are on their ways. The regular practice in filling out-of-town orders is to furnish a clerk with a list of the articles for an order; he assembles the articles and makes up the package, and it is often days afterwards before the values or prices are inserted and the items extended. About all that such shippers can do at the time of accepting the express company's receipt is to stipulate, as they quite generally do, that the value does not exceed that upon which the minimum rate is based.

These shippers throughout the country have sent Mr. Chandler, as their representative and without solicitation from us, to say to you that, so far as their express shipments are concerned, they are satisfied with the work of the Interstate Commerce Commission, and it is their request, as well as ours, that you allow that system of rates and practices to stand as it is—at least until it can have the fair test that the express companies and the shippers are cooperating with the commission to give it.

I thank you on behalf of all of us for the patience and courtesy you have shown us throughout this hearing.

Mr. HARRISON. Mr. Chairman, Mr. Esch asked me a question about that provision with reference to boxing or wrapping. That was really put in there after the Senate hearing by Senator Cummins to take care of our situation. But, as Mr. Kerfoot has said, it is impracticable for us to get a statement in writing from the consignor, and if it were practicable to get a statement, that would leave the question then open to proof as to whether he stated the correct value. Our business, which is distributed out from the big cities, is in packages, and the produce and vegetables and things of that kind which are brought into a big city are brought in in bulk. Take a city like New York—there are four companies there doing business, and in the afternoon from 4 to 7 o'clock we pick up from 100,000 to 135,000 packages. The shippers fix them up after they get there, after 2 or 3 o'clock, and we pick those packages up between 4 and 7 o'clock, and they have to be billed out and the charges made, and then they catch trains going out there at 9 or 10 o'clock at night. They are handed to us by clerks; they are handed to us in apartment houses and hotels by bellboys and by various people of that kind, and it is impossible and impracticable to get a statement of value in writing. Now, if the bill could be amended—and we took that up with the Senate committee and they seemed to agree to that—and leave out the statement in writing, that would really be an advantage.

The CHAIRMAN. Securing your statements and keeping your records is almost as much trouble to you as transporting the packages?

Mr. HARRISON. It is. It is a burden on us, an awful burden.

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